

## **METROPOLITAN AREA PLANNING DEPARTMENT**

### **Minutes**

**February 10, 2000**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, February 10, 2000, at 12:00 p.m. in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; Chris Carraher; Bud Hentzen; Bill Johnson (late arrival); Richard Lopez; John W. McKay, Jr.; Susan Osborne-Howes; George Platt; Ray Warren; Harold Warner, Jr.; and Deanna Wheeler. James Barfield, Ron Marnell and Jerry Michaelis were not present. Staff members present were: Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Lisa Verts, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

#### **1. Discussion on Comprehensive Plan and Redevelopment Incentives Report.**

Following a lengthy discussion in which several Commission members expressed either support or discontent with the proposed Comprehensive Plan, the MAPC approved the following Plan amendments:

1. Insert into Section I.C., a new objective statement received from Carolyn McGinn that states it is in the public interest to enhance and encourage agricultural activities within Sedgwick County;
2. Reword Section XI.A1. to reference the need to enforce safety and sanitary codes in Sedgwick County;
3. Reword section XI.All. to delete reference to a rental housing inspection program and add reference to the enforcement of existing housing codes and statutes, ensuring that all types of housing are kept in compliance with minimum housing, safety and sanitary standards.

The Commission also discussed the draft Redevelopment Incentives Task Force Report and suggested areas where the Task Force Report needed further work, including:

1. The boundaries should be expanded to include other aging neighborhoods;
  2. There should be a stronger focus on strategies for attracting middle and upper income residents to revitalization areas; and
  3. The 'stakeholders' who are consulted in this process should be expanded to include residents in the revitalization areas.
2. Subdivision Committee item 2/2 was approved subject to the Subdivision Committee recommendations.

**GAROFALO** "Is there anyone here to be heard on Subdivision Item 2/2? Okay."

**MCKAY** moved, **GAROFALO** seconded the motion, and it carried unanimously (10-0).

Item taken out of order:

**2/2. - S/D 00-11** – One-Step Final Plat of LEGACY PARK WILSON ESTATES ADDITION, located on the southwest corner of 21<sup>st</sup> Street North and Webb Road.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for any guarantees or easements. No additional guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat proposes six access openings along Webb Road and three openings along 21<sup>st</sup> St. North in accordance with the approved CUP's. The access controls referenced in the plat's text shall be corrected to note "Lot 1, Block 1". Distances shall be shown for all segments of access control. Access openings located within 250 feet of the intersection of 21<sup>st</sup> St. North and Webb Road are limited to right turns only, or a guarantee provided for future construction of a raised medial.
- E. A joint access easement between Lots 3 and 4, Block 1 shall be established by separate instrument.
- F. A cross-lot circulation agreement between the non-residential lots in the plat shall be provided.
- G. In accordance with the CUP's, the Applicant shall provide a guarantee for the following traffic improvements: a) A

deceleration lane for southbound Webb Road traffic at Wilson Estates Parkway, b) a left turn lane for northbound Webb Road traffic at Wilson Estates Parkway, c) a deceleration lane for eastbound traffic on 21<sup>st</sup> North, d) left turn lanes for eastbound and westbound traffic at 21<sup>st</sup> St. North and Greenleaf for entrance into Lot 1, Block 1 and the residential subdivision north of 21<sup>st</sup> St. North.

- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable.
- J. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- K. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- L. The applicant shall provide a guarantee for paving of Wilson Estates Parkway.
- M. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUPs (referenced as DP-200 and DP-201) and their special conditions for development on this property.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the names(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically, but not limited to, the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require a NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all constructions sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the city and County GIS Department.
- 2/1. S/D 00-04 – One-Step final plat of MIDWEST HOUSING ADDITION, located on the east side of Broadway, south of MacArthur.**
  - A. Existing municipal services are available to serve the site. City Engineering needs to indicate if any guarantees are required.
  - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.

- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A letter from KDOT shall be provided indicating their agreement to accept drainage from this site.
- D. The plat proposes one access opening in conformance with the CUP. The CUP also required a minimum distance of 300 feet between this opening and any opening located to the north or south; which should be denoted on the face of the plat. The Applicant shall guarantee the closure of the driveway openings being located in areas of complete access control.
- E. The MAPC signature block should be revised to reference "Francis S. Garofalo" as the MAPC Chairman.
- F. The owners noted on the plat do not correspond with the owners denoted in platting binder.
- G. The platting binder indicates that a mortgage is being held on this site. This party shall be shown as a signatory on the final plat tracing or proof provided that the mortgage has been released.
- H. In accordance with the CUP, a cross-lot circulation agreement shall be provided between this lot and the GC-zoned property to the south, which was part of the CUP.
- I. To allow for City Council approval of the plat, the City Council signature block needs to be included on the final plat tracing.
- J. If platted, the building setbacks are required to be a minimum of 20 feet to conform with the Zoning Code.
- K. The final plat tracing should indicate that this plat is subject to DP-246.
- L. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP (referenced as DP-246) and its special conditions for development on this property.
- M. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- N. The Subdivision Committee requires a 20-year contingent street dedication platted for Emporia. The Applicant needs to provide a restrictive covenant prohibiting development on the lot east of the Reserve until sewer and water services are available, in addition to access.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning Staff "This is the Midwest Housing Addition. You should have a handout in regards to this that was distributed today. A one-page tax parcel map, if you would like to follow along.

This is a one-lot plat, located on the east side of Broadway, south of MacArthur, encompassing twelve acres. The site was approved for a zone change to 'GC' General Commercial, subject to platting. It is also subject to a CUP that includes the northern parcel of the CUP, this piece right here (indicating). The applicant proposes mobile home sales on the site.

The site abuts an unimproved right-of-way for Emporia Street, located right here (indicating), and this extends from MacArthur to the north. The Subdivision regulations state that a subdivision shall provide for the continuation of streets in the surrounding areas and both the zone change and the CUP were approved by the City Council, subject to a 20-year contingent dedication for that extension of Emporia. The City Council requested that there be further discussion by the Planning Commission at the platting stage to determine whether a contingent dedication of right-of-way or a reserve for that extension should be approved.

At last week's subdivision meeting, the plat was approved with a 20-year reserve to be platted for Emporia. Planning staff, however, is in favor of a contingent dedication of right-of-way for that extension. The Subdivision regulations specify that if land is determined to be needed for a future public purpose, then the land could be platted as reserve for future public acquisition; but also, the Subdivision Regulations state that for the dedication of a contingent right-of-way, the Planning Commission could determine that would be needed to provide for potential street connections to adjoining undeveloped property to prevent the land-locking of abutting properties and to avoid an excessive number of drive-ways along section line roads.

In this case, the applicant would be prohibited from developing on either a reserve or a contingent right-of-way, although the storage of the applicant's mobile homes would be permitted. If it were platted now as a reserve, though, the City would have to acquire it in the future if Emporia was extended. Now a contingent dedication of right-of-way would be triggered by the development of property to the south.

At last week's Subdivision Committee meeting, the applicant, who also owns the property to the south expressed a lack of need for the extension of Emporia. If you take a look at your tax parcel map, you will see the pattern of ownership south of the site, and you will notice that they are elongated parcels extended from Broadway. The Subdivision Committee last week requested that the staff research the ownership of those properties between the site and I-135, which is approximately 1000 feet south of the property. It was discovered that the applicant for this plat owns two lots directly south of the site, extending about 300 feet to the south and for the remaining portion, for the remaining 700 feet to the south that contains 8 lots, which are owned by three separate parties.

Also, of note, you will notice on the zoning map that there is a gap in the 'GC' General Commercial zoning, just to the south of this site, right there (indicating), which apparently was created to allow for the extension of Emporia to extend on to the south.

If those properties to the south are divided, they would essentially be landlocked with no available access. The Subdivision Regulations do encourage future access to adjacent unplatted properties, and the unplatted properties to the south of the applicant's property would benefit from approved access with the extension of Emporia. An internal road system created by the extension of Emporia would encourage development south of this property, would improve circulation and would prevent the land locking of properties.

Last week, Commissioner Warren presented a court case that addressed the issues of taking and property rights. We do have Joe Lang here from the City Law Department to address that issue. Are there any questions for staff?"

**GAROFALO** "Any questions? Is the applicant here, wishing to make a statement?"

**JEFF DETTMAN** "I am with Benchmark Land Survey. The property-owner would prefer to have the reserve rather than the contingent right-of-way. In reality, they prefer not to have either one, but I think it is their feeling that by having the reserve, it sets aside land for the City in the event that they do need to extend the street, yet it doesn't burden them with having to guarantee the installation of improvements. That would be necessary with the contingent dedication."

**GAROFALO** "Are there any questions of the agent?"

**PLATT** "I would like to go back to this issue of what property the applicant owns. I asked at the Subdivision Committee meeting, if the applicant owned property all the way to the interstate, and the answer I got was yes. Now staff tells me that is not true. Which is true?"

**DETTMAN** "To be quite honest, and I don't know why she told you that, maybe she misunderstood, but I would assume that staff has done the research accurately."

**GAROFALO** "Are there any other questions? Okay, thank you. Is there anyone else here to speak in favor of this plat? Is there anyone to speak in opposition? Seeing none, we will bring it back to the Commission."

**MCKAY** "I was one of the two dissenting votes, and the reason why is that if you will look at that zoning map, the white spot

and the pink just south of the designated area looks like to me that on the plat it showed that the street went and connected to the north and the south. We were assured by the applicant that they owned the land to the south and they were never going to do anything any more than this. Well, if they own it and they are never going to do anything, the contingent dedication won't make any difference in my opinion, but if for some unknown reason, it does get developed, I agree that that portion of this will be landlocked because there is no way you can get to it. That was the reason why I voted in opposition to the motion."

**LOPEZ** "Can we hear from legal staff on the position of the court case since we have Joe here?"

**JOE LANG** "Mr. Warren, did you have a specific question you wanted to ask or did you just want an overview of the Dolan and the Takings issue?"

**GAROFALO** "Joe, for us who were not present at that meeting, could you kind of summarize a little bit about what this case was about?"

**LANG** "I can give you a summary of the case and the status of the law, if you prefer me to go ahead, Mr. Warren."

**WARREN** "That would be fine. Of course, the point I think ought to be made here, at least to everyone is that Emporia Street doesn't exist to the north. It may show up in some plat somewhere, the folks that own that property, as I understand it, didn't even know it, but Emporia Street does not go north of MacArthur. Emporia Street is dead in that area. No request has ever been made that Emporia Street go south of this property. My position at the time was that we had no right to go in and take this lady's property simply because she is here in an application for something totally irrelevant to Emporia Street. If there was any relevance between what she wanted to do and Emporia Street, then I could get the connection. So I just picked up just a brief, and if you don't mind, I will just go ahead and read it. This is a Supreme Court decision, and this is what prompted your being here.

It says this 'the reasonable relationship test is explained in the following quotation from the Nebraska Supreme Court', which normally wouldn't mean anything except Justice Rehnquist included his opinion. That gives it quite a little significance. This is quoting Rehnquist 'The distinction therefore which must be made between an appropriate exercise of police power and an improper exercise of eminent domain, is whether the requirement has some reasonable relationship or nexus', which mean link, 'to the use to which the property is being made, or is merely being used as an excuse for taking property simply because, at that particular moment, the landowner is asking the City for a license or a permit'.

And then going on, it says 'accordingly, the Nebraska Supreme Court held that a city may not require a property-owner to dedicate property for some public future use as a condition of permit approval when such future use is not occasioned by the construction sought to be permitted'.

Now, I see nothing in there that we understand that there is going to be any construction permitted and I might, in reading this thing further, I found out that Justice Scalia wasn't quite as nice as to call it improper exercise of eminent domain. He called it extortion. With that, that was my grounds for standing where I did, and I still stand on that."

**LANG** "If I may, this case, which involved a hardware store having to dedicate a bike path, and in a prior case to that, the Nollan case, where a California owner was required to give public access to a beach across property. Those two cases together have raised a lot of issues and I think sensitized Municipalities and Planning Commissions a little more, as to what they do in reviewing development. If I can just put this into context, these cases and courts and commentators have been struggling to try to put flesh on the bones of this case since 1995, when it came down. But in essence, in any project you are reviewing, any application you are reviewing, where you are imposing conditions on the use of the property, there is sort of a four-part analysis that you need to go through. First of all, does the regulation have a legitimate public purpose? I think streets, obviously, are public purpose, and I think staff has laid out some other rationale.

Second, does the regulation deprive the owner of all economically viable use of the whole property? Again, I think you would say 'no' here, because the rest of the property can be used for storage, etc. The next two steps, I think are the ones that you concerned about. Is there a relationship, or the term the court used, a nexus, between the condition and the public purpose. The public purpose would be street, and access, is there a relationship between that and the condition.

Finally, is there a rough proportionality, again a term the court used, between the extent of the exaction and the impact of the development or use. In the Dolan case, the extent of the exaction was that the City had failed to do anything to try to quantify that as to why they needed to take 10% of the property for green space and bike path. There was no quantification of what the impact of this particular permit and development would be on traffic, etc. The city court found that failed completely in trying to give any justification, any rationale, any analysis for why it was taking this and what it needed it for. It sent it back down and they eventually worked out something with the property owner where they got a lesser amount for the same purposes.

In the quote that you have given here, I think you need to balance that. Sometimes cities get quite creative as to what kind of conditions and exactions they impose and that is certainly the problem in the beach view and the Nollan case, for example. But the same Justice expressly recognized the validity of cities continuing to require dedications for streets, sidewalks or other public ways that have traditionally been reasonable exactions to avoid excess congestion of a proposed property use.

There has been a lot on this particular issue as to whether or not street improvements should be treated separately than other types of conditions and impact fees and other things that might be put on the property. The courts have said that traditional land use regulations do not violate this principle that governments shouldn't be forcing people because there is a cause and effect relationship between the property use restricted by the regulation and the social evil that the regulation seeks to remedy.

Saying that a property development usually causes the impact that you are seeking to remedy. This is why all of the time you have accel/decel lanes that you require people to provide, etc.

This one, obviously, you are getting into something a little different. You are not looking at what traffic is being increased along Broadway, but looking at an interior use, and it has been argued frequently that interior developments also fit into these traditional uses where governments require these dedications because the development is going to be generating this kind of traffic. You do this in your subdivisions now, you require interior streets and sidewalks, etc. This is very legitimate and the responsibility that you have to make sure that by approving a development you are not promoting congestion, safety impacts, that you are not causing deterioration of the services to the public.

I could go on and read what a lot of people said about this, but it really comes back to yes, legally you can do this. Legally you can make a requirement of a development to dedicate in some way or another by easement or reserve, or whatever, streets necessary to serve that development, the east part of it and other development that it is a part of. The question that you have to address here today is whether this street is related to this development. Is the potential interior development of this lot something that you need to be concerned about? Also, is it proportional. Is this property being unduly burdened such that the public should pay for this property if you are going to take it, with this condition. But you can do it. I don't think the Doolan case stands in your way of doing it, but it does say to you that you need to look at why you are doing it. I will certainly address any additional questions or comments that you have."

**WARREN** "I certainly agree with you that any time a subdivision is created and the need is created as a result of that and certainly they are going to have to give roads and things like that. I am not going to debate this with you as an attorney, because I am not that. But I do believe, in this case, that we are taking this lady's land, and I think we are taking it without justification because we don't need it now. We don't know that we are ever going to need it. I think where she has agreed to leave it as a reserve whereby it would prohibit her from building on it, at least if we did have to come along later and take the land, we wouldn't have to pay for the building.

I think that is a concession she has made, and I am not sure she would have had to. But I think that that is a reasonable concession that she has agreed to leave the land in reserve, but not give you a dedication to it. So whether the legal is right or not, I think the moral aspects of it is, and we don't have any rights to that land and we don't need it."

**LOPEZ** "Marvin, to the south, where that other dedication is of the property that is in question. Right to the south of that, that is owned by separate individuals, not this applicant?"

**KROUT** "I understand that the property immediately to the south is owned by this applicant."

**LOPEZ** "I take it it is the big white section there. That property, even though it is up against I-135, or is it 235, that probably could be developed. Is that a reasonable assumption to make that that could be sold off and developed?"

**KROUT** "If you could get access to it."

**LOPEZ** "My point is that if it is sold off and somebody wanted to develop it, how do they get access to it?"

**WARREN** "They can get it through eminent domain."

**LOPEZ** "Through the applicant's process?"

**WARREN** "Sure. Take her reserve out."

**LOPEZ** "If the property to the south is dedicated and to the north is dedicated, why shouldn't we require it to be dedicated? I have to agree with Commissioner McKay on this. The last position that he took."

**WARNER** "Do these lots run that are running east and west from Broadway to the east? They are long, narrow lots, therefore, the owner of those lots has access from Broadway. Is that not correct? So we can get in off Broadway and drive all the way east on this property. That is access."

**WARREN** "Sure it is."

**KROUT** "But it is not good access. And you are the Planning Commission. You are supposed to plan for the future. If you think about how large commercial areas have been developed in the past, and 100 years ago, we used to require developers to provide a street every 300 feet in one direction and every 600 feet in another direction because we were planning for the future development of lots and blocks.

Now we have development in sometimes bigger chunks, but you can see many modern developments, and I will point to 21<sup>st</sup> Street and Rock Road where you have Bradley Fair Parkway, or just down the street here at 47<sup>th</sup> and Broadway, where you have Emporia running through the middle of a similar commercial area, and it is allowed for the future development and redevelopment and to higher uses of commercial land that otherwise is going to have a lot of very poor access. That is a third of a mile deep, those parcels, and every one of those little narrow lots is going to have to have a separate drive way to Broadway. It makes more sense to be able to keep the option open for the future to be able to develop internal parcels, have alternate circulation up to MacArthur and have an overall, less congested transportation system and the potential for a higher use of this land that is otherwise going to be very inaccessible. To me, it isn't all that much different than getting right-of-way in

advance for other projects. If you look at how the community develops, we don't have too many places where we have long strips of 50-foot lots that are one-third of a mile deep. In fact, the Subdivision regulations say that a lot that is more than two times deeper than it is wide is not a proper lot. The pattern that you have there is a pattern of ownership before there was platting. It is not good planning. It is a disorderly pattern and the Planning Commission is supposed to be involved in trying to make order out of development."

**WARNER** "Isn't a reserve order? A 20-year reserve is not order?"

**KROUT** "I am telling you that the tradition of this community since we had platting in the 1920s is to require dedications for issues like this."

**WARREN** "Well, with all due respect to our professional planner, I would say that if I, as a planner have to always look out for the needs of society, even at the expense of trampling on what I think are some protective constitution rights of the individual, I probably won't be a good planner. I don't think we have that right. I think we need to look out for the rights of the individual. In this case, I think they are being trampled on."

**KROUT** "Okay, but you do have the Law Office telling you that you do have the right."

**HENTZEN** "I would like to ask the lawyer, has the City offered any kind of reimbursement for this dedication?"

**LANG** "At this point, I am not aware of any. That is not an issue at this point. That is part of the purpose of this whole analysis, and that is whether this is something that the property owner rightfully needs to give to the community to allow proper use of that property resulting from their own development. So, it is not intended to compensate for something that you can legitimately require them to do. Now, if this is an undue burden, if this goes beyond what you have the right to do, then you get into a situation where you should be compensating them for this. But that would not have been intended here and I doubt if it has been done."

**PLATT** "Mr. Lang, I have a question. You probably can't give me an answer right off the bat, but when was the last time that in the traditional older part of the City, we let a piece of property a third of a mile long go with a reserve for a future street as opposed to a street dedication?"

**LANG** "I do not know."

**PLATT** "Can you recall any?"

**LANG** "I can't."

**WARREN** "It's a contingent dedication."

**PLATT** "I know it. Have we ever done this before, put in a reserve instead of a contingent dedication?"

**WARNER** "George, look at the note right above staff comments. 'The CUP was approved by City Council, subject to a 20-year contingent street dedication for the extension of Emporia.'"

**PLATT** "Yes, we did that, and I objected to it."

**WARNER** "Well, you answered your own question then."

**PLATT** "No, I mean in any other part of the City, have we ever done this?"

**WARREN** "Well, I think it is important that we look...this is not a development, this is not a subdivision, this is not a plat. This is a lady who is asking to use her land in a manner in which she is certainly entitled to use it. That is all. We are not platting, we are not developing, we are dedicating."

**PLATT** "Yes, we are platting. This is a plat."

**WARREN** "Well..."

**LANG** "It is a CUP."

**WARREN** "Yes, it is a CUP; however, it is a use. This lady is asking to use her land in a very legitimate manner."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments and a 20-year contingent dedication for the extension of Emporia Street.

**LOPEZ** moved, **GAROFALO** seconded the motion.

**GAROFALO** "Is there any discussion? Okay."

**VOTE ON THE MOTION:** The motion carried with 6 votes in favor (Osborne-Howes, Garofalo, Lopez, McKay, Wheeler, Carraher), and 4 votes in opposition (Hentzen, Warner, Warren, Platt).

**PLATT** "Let the minutes show, so that when the City has this, they realize that my 'no' vote was because I do not believe in a 20-year limit on the dedication, but I certainly support the contingency as opposed to a reserve."

-----

McKay left the meeting at 3:35 p.m.

**FRANK GAROFALO**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

-----

**3/1. V-2213** – Request to vacate a ten-foot utility easement, located west of Stackman drive on the south side of Pine Street, described as:

The westerly 10-foot utility easement as recorded on Lot 1, W.A.M. Addition to Wichita, Sedgwick County, Kansas.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time January 18, 2000, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of a utility easement described in the petition should be approved.

The Subdivision Committee recommends approval.

-----

**3/2. V-2214** – Request to vacate a portion of a 30-foot platted street-side building setback, located south of Maple and west of Tyler on the northwesterly corner of Callahan Street and Westfield Avenue (511 S. Westfield), described as:

The northerly 15 feet of the southerly 30-foot platted setback adjacent to Callahan Street on Lot 10, Block Q, Callahan Addition to Wichita, Sedgwick County, Kansas, EXCEPT the southeasterly 30 feet.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time January 18, 2000, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

C. Therefore, the vacation of a portion of a utility easement described in the petition should be approved.

The Subdivision Committee recommends approval.

**LISA VERTS**, Planning staff "On Vacation Items 3/1 and 3/2, I have nothing further to add beyond the Subdivision Committee presentation. Both the Subdivision Committee and staff do recommend approval on both of these items."

**GAROFALO** "Is there anyone here to be heard on items 3/1 or 3/2?"

**MOTION:** That the Planning Commission recommend to the governing body that items 3/1 and 3/2 be approved.

**WHEELER** moved, **LOPEZ** seconded the motion.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
4. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time January 18, 2000, which was at least 20 days prior to this public hearing.
  5. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
  6. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- D. Therefore, the vacation of a portion of a utility easement described in the petition should be approved.

#### **SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval.

**VOTE ON THE MOTION:** The motion carried unanimously (9-0).

#### **ZONING**

4. **Z-3339** – Southborough Partners/Jeff Lange requests zone change from "SF-6" Single-Family zoning to "MH" Manufactured Home on property described as:

NW/4 OF SE/4, EXCEPT BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, SOUTH 500 FEET, NORTHERLY 211.17 FEET, NORTHWESTERLY 417.57 FEET TO NORTH LINE, EAST 345 FEET TO BEGINNING AND EXCEPT PROTECTION DRAINAGE CANAL. Generally located west of Meridian and north of 55<sup>th</sup> Street South.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant requests MH, Manufactured Home zoning on 37 acres located ¼ mile west of Meridian and ¼ mile north of 55<sup>th</sup> Street South in order to develop a manufactured home park. The land is currently undeveloped and zoned SF-6, Single-family Residential.

The applicant's site plan depicts 136 spaces (3.67 units per acre). All streets within the park are proposed to be 29 foot wide, back of curb to back of curb private streets. Primary access to the site is proposed to be off of Meridian, via a 29-foot wide private street that is proposed to be part of the platted addition, Southborough Estates, now known as a Welcome Home Community, a manufactured home park. (At the time this report was prepared, the Welcome Home site plan had not been approved.) The applicants propose one other point of access north to 47<sup>th</sup> Street North, but it is to be "emergency access only." This access point would require a bridge to be built across the drainage ditch to connect to Mt. Carmel, which winds through the Stonebriar Addition, a site built residential development.

Area set-aside for open space, walking paths and a storm shelter are depicted on the site plan. The code requires a sidewalk on one side of all loop streets serving more than 48 lots, or permits the applicant to propose an alternate sidewalk plan. If the sidewalks, as proposed comply with Americans with Disability Act (ADA) standards, there are three lots in the northeast sector of the park that are not located within the code required 1,320 feet of the storm shelter. The storm shelter could be moved northeasterly and probably get the lots within the required distance. If the sidewalk is not ADA compliant, then there are three additional lots on the east-side of the park that are not within 1,320 feet as measured off of an ADA compliant pathway. Off-street parking spaces are provided as required for 29-foot wide streets. A sizeable drainage ditch exists along the north and east property line. The southwest corner of the property is a low area that is heavily treed.

Surrounding land is developed / developing with: site built homes (SF-6, Single-family Residential); vacant (SF-20, Single-family Residential); manufactured home park (MH, Manufactured); and large-lot residential (SF-20, Single-family Residential) uses. A significant drainage ditch, 15 to 20 feet deep and 40 to 50 feet wide, exists along the north and east property line. The ditch is heavily wooded.

**CASE HISTORY:** In 1983 this site was part of a Conditional Use request (CU-263) to permit mobile homes. The request was recommended for denial twice by the MAPC and was later withdrawn by the applicant.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6", Single-family Residential and SF-20, Single-family Residential; site-built homes and vacant  
SOUTH: "SF-20, Single-family Residential; large lot residential  
EAST: "MH, Manufactured Home Residential; Manufactured Home park  
WEST: "SF-20, Single-family Residential; large lot residential

**PUBLIC SERVICES:** Sanitary sewer and water mains exist along 47<sup>th</sup> Street South and Meridian, however a study will have to be conducted to determine which line can best serve this site. The Stonebriar Addition, located north across the drainage ditch, has a lift station along 47<sup>th</sup> Street, which makes sanitary sewer possible. That lift station's capacity needs to be evaluated. The other option is to connect to the sewer line along Meridian. Meridian is a two-lane paved arterial, and currently carries between 6,400 and 6,800 average daily trips today. The Transportation 2020 Plan calls for eventual widening of Meridian to four lanes as far south as 47<sup>th</sup> Street. The newest edition of the City's Capital Improvement Program provides for widening Meridian from I-235 to 47<sup>th</sup> Street in 2008, but not further south. The most recent projections for the year 2030 show traffic at about 10,000 cars per day.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide identifies this area as appropriate for "low density residential" use. This category provides for the lowest density of urban residential land use and consists of traditional single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. The Comprehensive Plan calls for mobile home parks to be located in "medium" density residential areas and, on larger tracts and buffered by physical barriers from traditional single-family neighborhoods.

**RECOMMENDATION:** Planning staff has a policy of not supporting new "MH", Manufactured Home zoning in areas where site built housing may still be suitable. A 1997 staff report (attached) evaluated demand and supply for this type of housing in the southwest quadrant of the city. That study identified numerous vacant tracts that were already zoned "MH" or were most suitable for rezoning to "MH". This tract was not identified for rezoning in that study. Additionally, there have been concerns expressed by residents of southwest Wichita that they have more than their fair share of manufactured homes and manufactured home parks, resulting in a perception that south Wichita is a "trailer city." It is feared that this perception can cause potential homebuyers to locate in other parts of the city. Staff feels that this site is suitable for site-built homes. Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**.

However, if the Planning Commission feels the request is appropriate, then the Planning Department recommends that the approval be subject to: (a) the property being platted within one year, with consideration to possible turn lane improvements at Meridian, and (b) a revised site plan with additional mid-block walkway connections and adjustment so the storm shelter meets ADA requirements.

This request is based on the following findings:

1. The zoning, uses and character of the neighborhood: Three sides of the application area are zoned "SF-20", Single-family Residential and are either developed with site built homes or is vacant land. The fourth side is zoned "MH", Manufactured Home and is developing with a manufactured home park, but the two tracts are buffered by a wooded drainage ditch. The character of this area is mixed; the majority of the land is developed with single-family residential uses with one side developing with a mobile home park.
2. The suitability of the subject property for the uses to which it has been restricted. The site is currently zoned "SF-6", Single-family Residential. Given the fact that two subdivision, Stonebriar and Deer Creek, are currently under development north and west of the application area, staff feels that this site is better suited for additional site built homes.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request will further increase the disproportionate share of manufactured housing in the southwest quadrant of the city. If this request is approved, it increases the probability that "MH" zoning will sought for the vacant tract located to the north,

fronting 47<sup>th</sup> Street and the large lot property located to the south.

4. Length of time the property has remained vacant as zoned. The property is vacant today, but staff is unclear about how long or how it has been marketed.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Wichita Land Use Guide" identifies this area as appropriate for "low density residential" use. This category provides for the lowest density of urban residential land use and consists of traditional single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas. The "Comprehensive Plan" calls for mobile home parks to be located in "medium" density areas, on larger tracts and buffered by physical barriers from traditional single-family neighborhoods. In our opinion, this tract is not buffered sufficiently to the south or west. The 1997 "Manufactured Housing Report" does not indicate this site as appropriate for MH zoning.
6. Impact of the proposed development on community facilities: Until the study is complete, it is not clear what type of sanitary sewer improvements may be needed. If the request is approved, that study could be completed at the time of platting. With only one point of access, over 1,000 projected average daily trips generated by this development will be added to this segment of Meridian, which has significant traffic today and will have more traffic in the future, but is not scheduled for widening in the City's CIP..

**MILLER** "This is an item that you heard back in October that went to the City Council, and they have decided to send it back to you because at that hearing there were discussions about drainage and discussions about the potential to sewer this and whether or not site-built homes versus manufactured homes were possible on this site.

The issues that came up, as I mentioned, had to do primarily with sewer and drainage. We will take the sewer one first. To develop this particular addition, they had to install a lift station in order to facilitate putting in basements in this particular area. We did go out there and drive through the addition, and at least based on a visual drive-through inspection, what it appeared to staff is that the closer you are up here to the northern end of the addition, there are more basements up there and as you got further south, it appeared to us that there were a number of homes that were built on slab and we are basing that on the fact that we couldn't find any windows on the lower levels. We were assuming that if there were no windows down there they are not meeting Code, so they wouldn't have been allowed to build basements.

(Indicating) There are some here, there is a drop-off here where there are what you would call split-level, where the basement area is about half in the ground and half out and then the main floor is up above. There are some of those along this edge on the southern end where there is a drop, and I think there was one or two over here, but primarily these homes here appeared to us to be slab on grade situations. It has been indicated to us that if they were to install a lift-station that that would cost in the neighborhood of \$150,000 to \$200,000 and would make it prohibitive. As you know, staff is recommending denial on this particular request and we would argue that the addition to the north was able to put that in and to develop it and to market those homes.

The applicant is here today and has some folks with him that can address engineering and drainage issues as well. With respect to the drainage, Vicki Huang is here from Engineering and can help and you should have, at your seats, information from Poe and Associates and from M.S. Mitchell on their analysis of this site and what they have discovered. With that, I would answer any questions you may have. Again, Vicki is here in terms of the sewer situation and how that works."

**OSBORNE-HOWES** "I need to say that I received this in the mail (holding up a paper)."

**GAROFALO** "It appears that we all did. I think everyone was on the mailing list."

**WHEELER** "That neighborhood directly to the north, is that of stick-built homes or is it manufactured homes on foundations?"

**MILLER** "It is site built homes there."

**GAROFALO** "Anything else? Okay, then we will hear from the applicant."

**BOB KAPLAN** "Mr. Chair, Commissioners. My address is 430 North Market. I did not previously represent these applicants in this matter, but following your October 1999 meeting, I was asked to review your minutes, review the proceedings and asked for my opinion at that time. I do want to share with you my findings and my conclusions on this matter.

First of all, before I get started, based on Mr. Miller's presentation, we have a factual problem before we ever start. My clients advised me that the Stonebriar Addition, which is the addition to which Dale alluded, had stick-built, site-built homes, but does not have site-built homes without basements. Now I am told by my folks that there are no slab-on-grade homes to the north. I have not been out there. Dale went out there, but Mr. Riley tells me that those homes all have basements. They may not be view-out basements, but they all have basements. As a matter of fact, he tells me that Stonebriar, the developer to the north, had an option on this ground and did not exercise it because he was unable to build basements. There is, as those of you in the residential real estate market know, no market for slab-on-grade single-family homes. It is not a marketable product today.

Let me say this very quickly. We have a motor tour we want you to take by videotape, and I have M.S. Mitchell here to discuss the flood plain management. I have a representative of Poe and Associates to discuss the sanitary sewer considerations, and Mr. McKinley is here who will discuss any traffic concerns. I invite you to call these people to the podium and discuss these matters with them because when this was up last month, we did discuss land use as much as we discussed platting

considerations, so I thought I might as well just be prepared to discuss platting considerations and all of these gentlemen are present and have submitted their reports and are available. I would encourage you to call on them.

First of all, staff opposition centers on the flawed conclusion, and it is flawed, that the site will feasibly accommodate single-family homes. That is untrue. It is incorrect. Secondly, Mr. Miller's comment was, as nearly as I can paraphrase his comment 'we feel that there is more than enough manufactured homes in that part of town'. The first conclusion, Commissioners, is erroneous. The second conclusion simply has no basis in any lawful land use criteria. It is not something you can consider. It is a market-driven item, a market-driven force, and it has nothing to do with any lawful land use criteria.

There were no speakers in opposition. I don't know if there are any here today. There was a gentleman who spoke in October from the Deerfield Manufactured Home Park. I don't know if that gentleman is here, or if there are other folks here, but he was the only speaker and his concern was drainage and flooding problems. He made the comment that he was not concerned whether this was manufactured housing or site-built housing, he didn't care. It didn't make any difference one way or another, but let's work on the drainage problem. So that is what we have done and what we retained Mr. Mitchell to do and he can bring you up to speed on his conclusions and his discussions.

There is nothing in the evidence to support the motion that was made to deny this case in October, that the site is suitable for single-family, that was the basis under Policy 10, it is not. It is not, and that is evidenced by the reports which I furnished you because I knew I would not have time to verbalize them. That the development will necessarily impact neighboring properties. That is not true. We have a lower density in this part than an 'SF-6' density. Our lots are bigger than 'SF-6' lots, and we are only approximately 3-1/2, 3.67, I think, to the acre. So, that is erroneous. The staff report refers to that 1997 letter report contains a nice lot of catchy phrases, such as a Trailer City. I am not going to comment on comments calling things trailer cities. That is not the 2,000-year manufactured home market, and you all know that. The manufactured home today doesn't constitute Trailer City, and that is just silly.

I am going to only conclude, because I want you to look at this video. I know we have time limitations. I want you to operate on this premise, if you will, because these are not controversial issues. The landowner has a right to use his ground, and no one here is going to deny that. He has the right to use it in the most advantageous, the highest and best use. That is manufactured housing. It is not suitable for anything else. It is not commercial ground, and we can't build single-family, and we have the right to use the ground, so what do we do with it? And we are not harming anyone else. There is no harm here to a neighboring development. It is well screened, it is low-density, and at least as of last month, nobody here had any comment. We have about four minutes left. Do you have time to get your video on?"

**JEFF LANGE** "I am at 4911 South Meridian. Our office is in the same section as this property. I will explain the neighborhood to you and the compatibility of this project with the neighborhood. I think we have even caught on the video here the Stonebriar Addition and what is going on there on that neighboring property.

Video shown here.

You can see that there is ample screening of this project if there is a concern about the manufactured housing community. This property sits a quarter mile to the west of Meridian and a quarter mile north of 55<sup>th</sup> Street, half a mile south of 47<sup>th</sup> Street and half a mile to the east of West Street. This part of the video is of Southborough Estates, which is a community that we have developed. It is a manufactured housing community. I wanted to show you what our definitions are of a manufactured housing community. I think that everyone would certainly agree that this is certainly not a trailer city. This community has a waiting list. Any time that we ever have any lots become available, we have a waiting list of several people wanting to be in that community.

Here is the Stonebriar Addition, which is immediately to the north of the subject property. This is the same street that Dale just showed you where our emergency access would go to the north, and as we pan back here, these are the homes that are on the very south edge of that property, immediately to the north of the subject property. This shows you the wooded area along that ditchway, which provides a natural screening in existence right now between those homes and our community. There is even, not only just the deciduous trees, but also cedar trees there as well, as you will see in some future video. We will add, with our walking paths, some of those pine trees and evergreen trees.

I just wanted to show the housing we have here. This is mostly homes under \$100,000, and then give you a quick comparison back to the Southborough community. I think a lot of people might argue that the architectural diversity here in Southborough is more than that in the site built community. If you look down the street there, you don't just see garages only.

Here you will see an example of what we consider the greenspace. This is a walking path around the area. We have 57 varieties of trees planted along that walking path. It is a 6-foot wide path that circles the entire community, certainly allowing for pedestrian traffic, but also provides a very nice amenity for exercise and the thing that people like to do here today. This is now showing along Meridian the new Welcome Home Community, which we are not involved with. They put up a stone wall along that area. I wanted to show you a view as we drove along Meridian, looking directly to the west. This is the same view that you will have after our community is developed, and I don't think anybody, as they drive along Meridian will be able to tell whether those manufactured homes are a quarter mile deep or half a mile deep. This is showing that property and their undeveloped area that they are just now completing the engineering on and they will be moving to later this year. At 55<sup>th</sup> Street, it is impossible to see our community and the trees and the fencing that is already there along that street. This is the dense trees immediately south of our property and not only do those exist, but there is another row of dense trees. These trees are on the property line to the south of our subject property, so there is a double layer of trees there screening our property from 55<sup>th</sup> Street. The only view that we haven't looked at is to the west of our property and I am now standing on our

subject property, looking to the west. There are site-built houses to the west of these trees, and you can see, even in the wintertime, that you can't hardly see through there and see any site built housing. So there is certainly a lot of natural screening in place there.

I would invite any questions that you may have regarding sanitary sewer and floodway issues, which we have concluded prohibits us as the same people from Stonebriar were prohibited from putting in site-built houses with basements. That is why we have this zoning."

**PLATT** "I am confused. Do the houses to the north have basements, or do not have basements?"

**LANGE** "They do have basements."

**PLATT** "It seems pretty clear from the video that we saw the footings for buildings without basements."

**LANGE** "If there are any, there are very few homes in that area without basements."

**PLATT** "What you showed us were without basements."

**WARREN** "I don't know the relevance of that."

**LANGE** "I know, as a developer and homebuilder that it would be suicide to try to build a community which would be entirely without basements here today. Those were certainly not slab on grade homes. A foundation is not a slab on grade."

**KROUT** "Did you say that somewhere there is a prohibition against building with basements?"

**LANGE** "Our position here is that it would take approximately four foot of fill in order for this community to be built as site built with basements and over 40 acres of land besides our sewer costs that would, as Mr. Hill's letters have indicated, and I would like for you to visit with him about those questions. Besides those costs, which would be extremely expensive and prohibitive on their own, we would have to put in 4 foot of fill, which would make it totally impossible to put site-built housing on these 40 acres."

**KROUT** "In the subdivision to the north, the elevations are about the same as your property?"

**LANGE** "That is correct."

**KROUT** "Then how were they able to put in basements in the subdivision to the north? You said it is mostly basements."

**LANGE** "I would like for you to address that question to Mr. Mitchell, if you don't mind."

**GAROFALO** "Okay. M.S."

**M. S. MITCHELL** "Mr. Chair, members of the Planning Commission. Let me give you a little bit of background before I answer that question, Marvin. Back a month and a half ago, I contacted Chris Carrier of the Stormwater division, and laid out the fact that there is a Corps of Engineer ponding area here, based on a 25-year frequency storm. He and I are both aware that the Corps of Engineers has asked that all of the flood control ponding areas be upgraded to the 100-year standard, which is the same as FEMA. I agreed to do that for this area, using the same technique that used for the ponding areas on either side of Seneca on the north side of the floodway, and that I did. I submitted that report to Carrier and he has agreed with its conclusions and my recommendations that the 100-year flood or base flood elevation for this area either side of this creek be 1274.8, which is a foot higher than the 25-year standard that the Corps set. Those lots in Stonebriar would not meet that criteria. Some of them don't meet the 1273.8 criteria. Does that answer your question?"

**KROUT** "You are saying that they are on elevations that are lower than where your elevations will be here?"

**MITCHELL** "That is correct."

**KROUT** "So, not only have they built with basements, but they have built at elevations that are lower than you plan to have here. Why can't you build homes with basements on this site if they have done it in Stonebriar on even lower elevations."

**MITCHELL** "I don't think that is good planning to build below a known elevation and below a calculated elevation, based on the base flood."

**KROUT** "So, are you saying that we shouldn't have allowed the development to occur to the north where they have homes with basements?"

**MITCHELL** "Not with the elevations that are on the plat. That is my opinion."

**KROUT** "So, do we need to amend our Subdivision regulations?"

**MITCHELL** "No, you need to get better review of your plats."

**KROUT** "And you are saying that we shouldn't allow basements in areas like this?"

**MITCHELL** "With the lowest opening being below the base flood elevation, which those lots are."

**KROUT** "And is that throughout the City that we would have a requirement like that, or just in certain areas?"

**MITCHELL** "You already have a requirement like that for any flood plain that is mapped by FEMA. This one was not, but it was mapped by the Corps of Engineers."

**KROUT** "Well, when the property is taken out of the flood plain, then there is not a requirement like that, is there?"

**MITCHELL** "Then those elevations are set above the base flood."

**WHEELER** "M.S., I would like to make sure I track all of this. What you saying is that it is not feasible to put homes on basements in this area because you would have to raise the top of the foundation or the opening substantially higher than what the landing sets today, is that correct?"

**MITCHELL** "Yes. Not only the basement openings, or the lowest opening, but the utilities and the street access would also have to be raised to be compatible with those."

**WHEELER** "I am going to ask kind of a loaded question. If you don't raise the streets and the foundation to that level to be able to put a basement under it, if we put manufactured homes without foundations, then they are going to sit at this existing grade level, or how much will they be raised? Won't they be raised the same amount?"

**MITCHELL** "No, the City's Flood Management Ordinance requires that the lowest floor of manufactured housing be at the base flood elevation. Carrier has recommended that there be a foot of freeboard added to that and that is not impractical. The general ground elevation is above 74. If the floors of the manufactured housing are set at 75.8, that is not an unreasonable difference in elevation between ground and floor."

**WHEELER** "So if manufactured, whether they are manufactured or not, the foundations are set one foot above this level you are talking about, if I understand you correctly, that is several feet lower than what one on a foundation would be set at?"

**MITCHELL** "I don't understand the question. There won't be foundations under all of these manufactured homes."

**WHEELER** "I understand that, but the floor level."

**MITCHELL** "The floor level, Carrier recommends one foot above my calculated elevations, which would be 75.8. That is about a foot and .8 above the lowest elevation on the property."

**WHEELER** "But that one foot above is still lower than floor level if you put them on a foundation, is that correct? Or is it at the same level?"

**MITCHELL** "If you put a house on a foundation, you could put the floor level anywhere you like, as long as the lowest opening was at 75.8."

**WHEELER** "Okay. I follow you."

**GAROFALO** "Are there any other questions? Is there anyone else to speak on this issue besides the applicant or agent? Since they have eaten up their time. Do you want to speak in favor?"

**ANNIE BEST** "I am a Riverside homeowner that has recently become involved in the community consideration of the pending Comprehensive Plan. I have no direct connection to this project. I wanted to speak to you today to ask you to keep several things in mind as you deliberate on this application."

I grew up in an upper middle class suburban neighborhood outside of Washington DC. I will admit to you that while I thought otherwise, I actually had many distorted and false beliefs about 'trailer parks'. Sentiments and attitudes that many people still share. The fact is, I didn't step foot in a manufactured housing development until after I turned 40, and that was in your own southwest Wichita. I was visiting a single Mom who was trying to get assistance collecting back child support. Boy, did it wake me up to the stereotypes I held.

The point is that I realized that here was woman, like many throughout our community, struggling to provide a dry roof and a home to two children on service industry wages. This was the best she could do with only her own resources and hard work. There were not going to be any Government handouts to her.

After my meeting, I looked around. Do you know what I saw? I saw a neighborhood. Vital, alive, diverse. First, I ask you to try and visualize yourselves maintaining a home and perhaps a family on limited income. Being poor should not be equated with being lazy. Being poor is not criminal. While some of us enjoy a more affluent quality of life, we are in many ways dependent on those who work in low-paying service and retail jobs. Now, I ask this group to keep in mind what your left hand is doing, and is continuing to try to do. Look at the City of Wichita consolidated plan 1995 to 1999. Of low-income housing needs, this report says 'the demand for smaller units is much greater than the supply'. It cites the 1994 Wichita Housing

Authority waiting list that says that the greatest need they have is for one and two bedroom units, in fact they need 3,600 of the 4,985 names on the list. According to this strategic plan, the third most highly rated priority goal of a total of 75 was attainable, affordable housing programs.

Look at the Wichita 1998 Neighborhood Revitalization Plan. The second listed purpose for that plan is 'provide incentives for affordable housing to persons with limited resources'. Look at the work at the redevelopment incentives task force. Look at the Comprehensive Plan that is currently before this Commission. Goal No. 2 'provide for rural, suburban and urban residential areas, which provide a variety of housing opportunities'. Use the tools at your disposal to 'promote mixed use development, higher-density residential environments and appropriate buffering'.

Goal No. 11 'develop, conserve, and revitalize housing in neighbors that will provide safe, decent, marketable and affordable conditions for all residents'. A related objective, provide greater access to greater affordable owner and renter housing opportunities. I bring up these plans and reports to emphasize the amount of time; energy and public dollars that are going into efforts to create, maintain and revitalize affordable housing opportunities. To remind you of what the left hand is doing, it is with these items in mind that I ask you to consider the application of the private developer now before you. Ask yourselves if you have any lurking, hidden stereotypes and prejudices, as I did. Walk the proverbial mile in another's shoes and keep your eyes on the demographics. According to the AARP's product report on manufactured housing, of the 19 million people who live full time in over 8 million such homes across this country, 79% make less than \$40,000 per year; 62% make less than \$30,000 per year; and more than 2 million older Americans live in manufactured housing. The AARP promotes its use."

**GAROFALO** "Annie, your time is up."

**MOTION:** That the speaker's time be extended for 2 minutes.

**BEST** "Of the 2 million adults living in manufactured housing, 4 out of 10 new mobile homes are purchased by people over 50, and over half of these older owners earn less than \$20,000 per year. Generally speaking, I understand single-wide and double-wide manufactured units cost between \$16,000 and \$50,000 nationally. Think of what new construction is available locally in this price range. Imagine for a moment that this is the housing market dictated by your family's income. What options do you have in this community? New or used, owned or rented? And please remember just how hard you yourselves and the rest of us are working to ensure that those of moderate means have an opportunity to take a stake in our community and the potential to develop close-knit neighborhoods. Projects such as the ones before you can help meet these well-established needs. As we try to reach our strategic goals, I ask that you not dismiss any options."

**GAROFALO** "Thank you. Are there any questions of the speaker? Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition? Sir, you had wanted to speak."

**JOHN SCHUTT** "I live at 5252 South West Street. That is the property immediately to the west of this proposed development. Whether it is site-built homes or whether it is manufactured housing doesn't make any difference to me. When I spoke to you in October, I asked that you consider the drainage problems that have been created. My home flooded just prior to that meeting because of the heavy rains. I had a couple of inches of water in my basement and an acre of my land had water over 8 feet deep on it in a ponding area. Until the ponding area issue is resolved, and I have not heard anyone come up here and say from I-235 south and between Meridian and the Valley Center flood control plant, we have a plan to do away with this flapper valve that is on the end of this old drainage canal. When that Big Ditch fills up, that flapper valve keeps shut and they are correct, water starts backing up in there.

I have a basement under my home, as do my folks, as do the people in Deer Creek Estates. We haven't addressed the issue here, adding more homes is going to just continue to raise the water. Also, the ground level in this area, I agree that homes, if they were site-built homes, are going to have to be raised up because the ground table water is pretty shallow out there. It is normally around 10 to 12 feet below the surface. So you are not going to dig very deep and you are going to literally be in the ground plain of the water. My well is sitting on the bedrock at 35 feet, and we hit water at 9 when we drilled it. My home is obviously a little more elevated than this. I think I am probably 2-1/2 or 3 feet higher than ground level if a surveyor was to go out there and shoot it.

We built in 1989, so I don't remember the elevations, but it was around 79 or 80. So what they are saying about this ground being flat is correct, but no one has come up here and addressed, as far as I am concerned, the drainage issue, which the water coming from West Street and from 47<sup>th</sup> Street North and these manufactured housing areas, and everybody is trying to feed into that old canal. So I would ask that this Commission really look at the drainage problem. Thank you."

**LOPEZ** "I have a question of you, sir, did you state that you built there in 1989?"

**SCHUTT** "Yes, sir."

**LOPEZ** "Then you know that the water has ponded in that area."

**SCHUTT** "This is the first time since 1989 that I had water ponded 8 feet deep in the low acre west of my home."

**LOPEZ** "But it has ponded there?"

**SCHUTT** "Only a little bit of run-off from West Street. This time he had backed up around that old Canal and come over the top of the dike into it. I have never seen that in 11 years. Also, the water backed up through the old Cowskin Creek bed into the

Deer Creek Estates area."

**LOPEZ** "If they are approved to go ahead and build there, they have to raise the elevation a foot, I believe Mr. Mitchell said to 12.75. If they raise the elevation a foot, where is that water going to go?"

**SCHUTT** "That is what I am asking, sir."

**LOPEZ** "That is all I need to know. Thank you."

**SCHUTT** "I think it is going to back right up on me. Thank you."

**GAROFALO** "Are there any other questions?"

**SCHUTT** "I would like to say one other thing. As far as I know, all of the homes in Stonebriar have basements under them. I have driven through there a couple of times over the period of time. I am not sure that you can see windows from the street on all of them though."

**GAROFALO** "Do you know if they have had any flooding problems?"

**SCHUTT** "In Stonebriar? Well, they cut a couple of drainage areas into this ditch, so all of their water is coming right down Stonebriar into this canal. That canal was roughly 65 feet wide, and it is backing up. It goes around and goes straight south to the Valley Center Floodway, but when it is up and that flapper valve goes, that water starts finding places along that old dike that was built in the 20s and it comes over the top."

**GAROFALO** "Where are you in relation to this subject property?"

**SCHUTT** (Indicating) "We are this property here. That is my home sitting right there. This is my folks' home, and this is the Deer Creek Estate area. This is all the old bed of the Cowskin Creek because the Cowskin Creek now comes into the Big Ditch right here where it used to flow across and down through here. So water comes down West Street; there is actually a culvert right on West Street that dumps water, all the drainage coming down here in there."

When Southborough estates went in here, they cut holes through that dike to dump their water in there. There is a ponding area, I believe, in this area over here for this mobile home community that is going in. I think when it gets so full; it must dump into this old drainage canal also. But once the Big Ditch reaches capacity and that flapper valve goes shut, we've got to start holding all of the water in this area from I-235 all the way down to the Big Ditch. That is the reason I came to speak. Irregardless of the type of home, we've still got the flooding problem."

**GAROFALO** "Okay, thank you. Are there any other questions of this speaker? Okay, thank you. The applicant or agent has two minutes for rebuttal."

**KENNY HILL** "I am a Civil Engineer with Poe and Associates. I have provided most of the engineering on Southborough. I did the site plan that you see before you on this mobile home park. And I did the study for the sanitary sewer also. One thing I might point out is that the elevations will change very little with the site plan that is proposed for the mobile home park. The mobile homes actually sit probably 30 inches above the elevation of the streets, so they would be elevated by the plan that we have above this 100-year flood. If stick-built homes are built in this area, probably the site would be elevated to a higher level than it would be with the mobile homes, thereby using up some of the ponding area."

In Mr. Mitchell's study, he gave us flow information on the channels coming down around the perimeter of this area and we did size a structure that would handle that flow through this area. I think possibly what is happening is that there is a structure at the southeast corner of this addition in the drainage channel that is causing that water to back up on this man's property right now, and as part of this addition, we would replace that structure with a larger structure."

Mr. Mitchell said, I think, that that was an unpermitted stream obstruction right now and we would take care of that part. Now, there may be two other obstructions downstream that would have to be taken care of also. We would take care of one of them with this addition, the other two are on other properties, so we couldn't do anything about them, but I think it would help the property."

**PLATT** "What do you mean by the word structure?"

**HILL** "It is a concrete box structure. We show that there is 633 cubic foot per second flows at that point, and it would take a double 6-foot x 3-foot reinforced concrete box structure to handle that flow. That would be where the street comes in from the east."

**WARREN** "That is your emergency exit?"

**HILL** "No, that is the main entrance."

**KROUT** "Did I understand you to say that the mobile homes would be placed 30 inches above grade, and that the grade underneath those mobile homes is going to be ponding area?"

**HILL** "Some of it. I have a site plan that has all of the elevations on it as proposed. It could be elevated a little bit. But the plan that I had was generally 174 to 174.5 as I recall, to where during the 100-year frequency storm, there would be water in the street area, but all of the mobile homes in the site with the plan that I have, would be out of the water. They are going to be at least 30 inches above."

If you put in a subdivision with view out basements, the view out is generally five foot below the top of the foundation. That is what most developers want, is a view-out basement."

**LOPEZ** "If I heard you correctly, you said that there would be a slight increase in the elevation? How slight?"

**HILL** "Well, it varies. To make everything work in that area, there are some cuts and some fills. "

**LOPEZ** "It's 1274.8 is what Mr. Mitchell said."

**HILL** "Seventy-four eight?"

**LOPEZ** "Yeah. That is the same all the way to the back. From the front to the back, it is exactly the same."

**HILL** "Existing. But what we would do when we put in the streets we have to elevate that so we get the flow through there."

**LOPEZ** "How high?"

**HILL** "I can show you the plan."

**LOPEZ** "Is it 12 inches?"

**HILL** "Probably we are at 176.5 may be high, and 173.5 low."

**LOPEZ** "So then above that, as you stated, the manufactured housing would sit 30 inches above that? The bottom."

**HILL** "It varies. But, yes."

**LOPEZ** "And that there would be a potential for those streets and the area to be flooded. You have acknowledged that fact."

**HILL** "In the 100-year flood."

**LOPEZ** "So it is okay, then, for us to build in a flooded area, is that what you are saying?"

**HILL** "We do it all of the time. We elevate so that nobody gets flooded."

**LOPEZ** "Why should this keep coming up before this Commission continually the building in a flood plain or a flood area?"

**HILL** "Well, I think the other point that was made was that there was a addition north of here that is built lower than what we are proposing."

**LOPEZ** "Well, then, that is my point. Where is that water going to go then, if we are going to raise the elevation? Is it going to go back up to the north?"

**HILL** "I see what you are saying. You are worried about the ponding area. Filling in the ponding area?"

**LOPEZ** "That you are going to raise the elevation."

**HILL** "What we are proposing would be moving dirt around on the site so where we are cutting we are moving that dirt to the other part so the volume of water stored would probably be the same. I am also working on a plan right next to this for Paul Tredwell, and we propose a ponding area. It is for two purposes. One is to get the dirt to elevate the site, but that will also provide additional ponding in the area. I don't think that will be a problem."

**WHEELER** "What per centage of this site is considered this ponding area? Is the whole site in there currently, or just a small portion of it?"

**HILL** "I would say there is quite a bit of it in there, but the amount of ponding would vary, probably from a foot, foot and a half to nothing over maybe 2/3 of it."

**WHEELER** "So in an engineering mind, then it would drain to this drainage area and drain on to the south. That would be the primary drainage plan for this site?"

**HILL** "Yes."

**HENTZEN** "Kenny, on our staff report, the staff feels that this site is suitable for site-built homes. With how that appears to me, I don't think that is necessarily right. It may be their opinion, but staff recommends that this be denied. However, they say if it

is approved, they have something to say about storm shelters and ADA requirements. Do you have any problem with meeting the storm shelter requirements?"

**HILL** "No. I think we show a proposed storm shelter, and we plan to meet all of the requirements."

**OSBORNE-HOWES** "When you talk about site-built homes and the feasibility or the non-feasibility of those, are you saying that site-built homes have to have a view-out basement? I thought I heard that."

**HILL** "All I can tell you is that I am working probably with 10 or 15 different developers in 20 different subdivisions and every one has view-out basements on as many lots as we can get view-out basements built on."

**OSBORNE-HOWES** "Are you familiar with the Stonebriar Addition?"

**HILL** "No."

**GAROFALO** "Are there any other questions? Okay, thank you. I would like to hear from Vicki Huang from the Engineering office on the drainage situation there. I think we all need to hear that."

**VICKI HUANG** "Typically, the drainage plan is submitted at the time of platting and this area, I assume when they prepared their drainage plan, they will show a detention system to store the difference between their developed and undeveloped conditions plus the pad elevation for the mobile home site. These are set in a minimum of a foot above the 100-year ponding elevation."

At this time, we have not received or reviewed their drainage plan, but I would assume that that is what they would propose to do, create a ponding area as additional storage for the developed and the undeveloped condition. In other words, whatever they calculate as additional run-off will have to be taken care of."

**OSBORNE-HOWES** "We have this really long agenda today, we started at 12:00 and God knows when we will leave, but this was returned to us for clarification and to have staff look at drainage for the whole area, so they obviously have gone out and found some big guns and are giving us their answer and I hope that City staff would, too."

**HUANG** "On the ponding issue, the report was submitted to the Stormwater Management Engineer, and I did receive an E-mail that has his comments on it. Let me quote 'No fill should be allowed on any land that lies below elevation 1273.8. Should there be any proposed, then they have to provide replacement storage volume. If they fill some of the stored area, then they have to provide replacement storage volume at another location. Any structure built on the land must be protected to 1 foot above the 100-year flood elevation, which is determined to be 1275.8. He is saying that from a practical standpoint, he does not think any basement should be considered because of the ponding issue."

**PLATT** "But does he have any objection to non-basement housing?"

**HUANG** "No. He said anything that is built slab on grade is okay."

**WARREN** "Mr. Chair, these are all legitimate concerns and I am sure we are always interested in them, but right now, I think we are faced with land use. A land use case. These things are going to have to be satisfied at the point of platting, and that is where they belong. If they can't satisfy the requirements as established by staff at platting, they can't get the thing approved. I would like to get us away from this flooding thing now and go to land use and let that other come up when it is supposed to come up."

**KROUT** "I guess I would concur with that remark. I know the City Council sent it back with the direction to look at drainage, but we just had a case at 135<sup>th</sup> and Central that was overturned by the court because the deciding vote on that case said that they didn't vote for it because of their concerns about drainage, and the court found that that was an issue that should be reserved for the platting stage of development. Now, I don't always agree with Mr. Warren, but in this case, I think he has a good point."

**LOPEZ** "Vicki made a comment about the ponding. Vicki, have you seen the proposed plat?"

**HUANG** "I have seen a site plan."

**LOPEZ** "Okay. Well, looking at it, where would you see the ponding areas to be? I don't see any room for them except right down here at this corner, which is the lowest area. I am just asking."

**HUANG** "In the southwest corner."

**LOPEZ** "That would be the ponding or holding for this whole area?"

**HUANG** "They will probably dig it deeper and get the dirt spread to other parts."

**LOPEZ** "That addresses the issue for this site. What we have heard is that it is an issue for that whole area, not just this site. Are you taking that into consideration?"

**HUANG** "Like any plat, when they develop, they cannot make the situation any worse, but by the same token, if the problem is really a much bigger area, I think that is an issue that the City probably needs to do a CIP."

**MOTION:** I move that we recommend to the governing body that the request be approved, subject to the following:

- (A) The property being platted within one year, with consideration to possible turn lane improvements at Meridian.
- (B) A revised site plan with additional mid-block walkway connections and adjustment so the storm shelter meets ADA requirements.

**HENTZEN** moved, **WARREN** seconded the motion.

**KROUT** "For the record, because the staff recommendation includes findings for denial, please give your reasons for moving for approval."

**PLATT** "We voted for denial last time."

**WARREN** "I will state my reason for my second, and that is that we can't deny all use of this land, as counselor Lang told us earlier. We can't deny all viable economic use of that land. He is either going to use it for residential housing or manufactured housing, one or the other. We are going to have to approve it. I don't see this as a bad use for that land. The problems I have seen and listened to here have to do with drainage, which hasn't anything to do with the land use. So as a land use issue, I don't see much difference between one or the other."

**KROUT** "Does that mean that they have proven to you that they can't build subdivisions because either slab on grade or homes without view-out basements are not marketable and because to build homes with view-out basements would be cost prohibitive in terms of bringing in the fill, so you are saying that you don't think that this property can be developed with single-family homes, including the manufactured homes in a subdivision?"

**WARREN** "Mr. Krout, of course, I am not ever going to buy in to that philosophy that I see printed in our long-range plans that gives preference particularly to stick-built houses over mobile homes. I know that that is in our plan."

**KROUT** "I am talking about subdivision homes on lots for sale on permanent foundations versus a manufactured home park."

**WARREN** "Let me say this. I was impressed for two reasons with the young lady who spoke in favor of mobile homes. I was impressed on how well organized she was, what kind of research she did and I would have to say that she influenced me. I think there is a need for this type of housing and I think this particular developer has shown that he knows how to do it well. So for that reason, I will stay with it."

**GAROFALO** "Bud, do you have anything to add to that in terms why you made the motion?"

**HENTZEN** "All I can add to that is that I don't think there is a better and higher use for this property than to put manufactured homes as applied for by the applicant and although the staff may have a different opinion, they haven't proved it to me, so I made the motion to approve the application."

**LOPEZ** "I won't be supporting the motion because the Wichita City Council referred it back to us to look at the drainage for the whole area. The applicant has satisfied the drainage so far for his plat, but we have not addressed this area, the whole area, and that is what other people are here discussing, the drainage for that whole area. For that reason I am not supporting the motion."

**GAROFALO** "Is there any other discussion? I am kind of concerned about the drainage thing myself, since they sent it back for that, but based on that other case, I guess maybe we can't do anything."

**WARREN** "Let me ask a question of Marvin. Would we have a legitimate right to deny, predicated on our uninformed rationale and expertise on drainage? Would that be a justification for denial?"

**KROUT** "I don't believe so."

**WARREN** "I don't either."

**LOPEZ** "We denied it last time."

**WARREN** "We might have done it, but I don't think we have a legal right to deny it on that condition."

**JOHNSON** "This is a tough case. I have kind of been leaning one way and then the other, but here a few weeks ago, we had a case that was similar to this that was just east of this. It was in a residential area, an older, really old residential area. That neighborhood was in opposition and basically I think the County Commission denied the case. Here you have a piece of ground that has some very nice homes built around it, and I don't see any opposition here, which totally shocks me, but there isn't any, so I don't see any grounds on which we could deny it. So I am going to support the motion."

**OSBORNE-HOWES** "I have been going back and forth, too, and just following along with what you said, Bill, I don't think we should just approve something, as planners, simply because there is no opposition to it.

I guess somewhere in this it sounds like either you put in mobile homes with no foundations, or you have to put in homes with basements, and what is wrong with talking about the feasibility of manufactured homes on foundations, which everything that I read says that that is one of the leading trends. So they haven't convinced me that that is not viable, so I will be voting against the motion."

**JOHNSON** "But Susan, just a comment on that. My whole reason for voting for it isn't that there isn't any opposition. If there were a developer in here wanting to build some slab on grade homes, I would be supporting that, too. I think there is a need for lower income homes."

**WHEELER** "I have struggled with this. I support affordable housing as most of you know, but I am wrestling kind of the same thing, depending on the price range of homes. There is a lot of demand for view-out basements, but depending on the price range of the home, it has a lot to do with that. I strongly support manufactured housing. I would always prefer to see them on a foundation whether it is a slab on grade or a basement, rather than not. There are some nice homes around this. This does have buffering. Not all of the sites we look at do. So, I guess I am wrestling with whether I am really convinced that you couldn't do manufactured homes on some type."

**GAROFALO** "Are there any other comments? Okay, we have a motion to approve and a second. Let's have a roll call vote."

**VOTE ON THE MOTION:** The motion carried with 5 votes in favor (Johnson, Warren, Warner, Garofalo and Hentzen), and 4 in opposition (Lopez, Wheeler, Platt and Osborne-Howes). Marnell, Carraher, Michaelis, Barfield and McKay were not present.

**KROUT** "This will now go to the City Council. If this mobile home zoning is approved, the applicant that has a concern about drainage, as a courtesy we will be sure to note in the file to contact you when the plat is submitted, so that you will be able to talk to the engineers when they have more details on it."

- 
5. **Case No. Z-3355** – Robert Armstrong; Michelle Becker; Felt Kingdom Associates, c/o Dean Felt (Agent), request zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on property described as:

Lot 1, Sinclair Addition to Wichita, Sedgwick County, Kansas. Generally located north of Maple on the west side of Tyler Road.

**LISA VERTS**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant requests a zone change from the "SF-6" Single-Family Residential District to the "LC" Limited Commercial District for the northern half of a 1.03 acre platted lot located north of Maple on the east side of Tyler. The southern half of this lot is zoned "LC" and is part of the standard 600-foot commercially zoned corners that are present at the perimeter of the City of Wichita. The applicant wants to be able to develop the entire lot with limited commercial uses, instead of just the southern half. The applicant's intention is to develop the site for multiple tenants for use as a plumbing, electrical, and mechanical retail center.

The subject property is bordered by single-family homes on the west, north and east and a mixture of uses on the south. There is a tile and floor store on the same lot and to the south of the subject property, which is zoned "LC" Limited Commercial. All other surrounding property is zoned "SF-6".

The applicant has submitted a proposed site plan that accommodates the addition of retail space for two additional tenants. The existing retail floor supply store and residence will remain on the lot. There are existing trees along the fence-line of the property to the north. The site plan shows a 6-to 8-foot fence on the north property line with landscaping, as required by the City of Wichita Landscape Ordinance, south of the fence. Staff feels that placing the fence on the property line would be detrimental to the existing trees on the site. Instead, staff recommends that the fence be placed 10 feet south of the property line with landscaping north of the fence to create a buffer for the residential property to the north, retaining as many of the existing trees as possible. A landscaping plan would require approval by the Director of Planning. Staff also feels that access along Tyler should be reduced to one access point with a standard 30-foot driveway, preferably at the northern edge of the lot.

**CASE HISTORY:** The subject property was platted as part of the Sinclair Addition July 6, 1978.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6" – Single-family residence  
SOUTH: "LC" – Gross Tile and Custom Floors (on same lot)  
EAST: "SF-6" – Single-family residences  
WEST: "SF-6" – Single-family residences

**PUBLIC SERVICES:** Municipal water and sewer service is available to this site. Tyler Road, a designated arterial, provides access to this site (50-foot half-street right-of-way). The traffic volume (1997) for Tyler Road, north of Maple is 18,500 Average Daily Trips (ADTs). The 2030 projected volume is 24,000 ADTs.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan designates this area as appropriate for low density residential uses. The commercial locational guidelines of the Comprehensive Plan recommend that commercial uses should be located in compact clusters versus extended strip developments, except for areas and streets where these uses already exist or where traffic patterns, surrounding land uses, and utilities can support such uses. The Plan also recommends that commercial development should have site design features that limit noise, lighting, and other activity so as to not adversely impact surrounding residential areas. The MAPC has an unofficial policy of supporting the expansion of existing businesses when appropriate.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request for "LC" Limited Commercial Zoning be APPROVED subject to a Protective Overlay with the following restrictions:

1. The area to be rezoned shall be limited to those uses permitted in the "NR" Neighborhood Retail district, parking for uses permitted in that district, and Construction Sales and Service. Signage on the north half of Lot 1, Sinclair Addition, shall be limited to those signs permitted in the "NR" district.
2. The applicant shall submit a landscape plan to the Director of Planning for approval prior to development. This plan shall identify the trees along the north property line to be preserved, and include a 6- to 8-foot fence 10 feet south of the north property line with a landscaping buffer north of the fence to be maintained by the property owner. A landscape street yard is required on the west boundary of the property adjacent to Wood Lane right-of-way.
3. Access to all of Lot 1, Sinclair Addition shall be limited to one driveway constructed to city standards of 30 feet.
4. The applicant shall dedicate, by separate instrument, 4 feet of additional utility easement, 2 feet on either side of the existing 16-foot utility easement, thus upgrading this utility easement to current city standards.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is at the southern boundary of a well-established residential area. The zoning on this lot is a combination of "LC" Limited Commercial and "SF-6" Single-family residential because of the standard 600-foot commercially zoned corners that are present at the perimeters of the City of Wichita. This lot has been developed commercially on the southern half, yet the original residential structure is still used on the northern half of the lot.
2. The suitability of the subject property for the uses to which it has been restricted: Mixed zoning on this lot prevents new commercial development on the northern portion of this lot or expansion of the existing business.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Further retail/commercial development is likely to increase traffic onto this lot. The standards for screening, landscaping, and lighting in the City Codes, in addition to the conditions set forth for approval of the zone change, should provide appropriate buffering for the home to the north.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area as low density residential. However, the MAPC has an unofficial policy of supporting the expansion of existing businesses when appropriate.
5. Impact of the proposed development on community facilities: The applicant's request should not have a negative impact on community facilities, but there is potential for more than a minimal impact on the traffic in the immediate area.

**GAROFALO** "Besides the applicant or agent, is there anyone here to speak on agenda item No. 5? Is the applicant agreeable with conditions?"

**VERTS** "It is my understanding that the applicant is agreeable to the conditions stated in the staff report."

**DEAN FELT** "My address is 1800 South Longford Court. My client has no problems with what staff is representing and we will accept it the way it is."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The application area is at the southern boundary of a well-established residential area. The zoning on this lot is a combination of "LC" Limited Commercial and "SF-6" Single-family residential because of the standard 600-foot commercially zoned corners that are present at the perimeters of the City of Wichita. This lot has been developed commercially on the southern half, yet the original residential structure is still

used on the northern half of the lot. The suitability of the subject property for the uses to which it has been restricted: Mixed zoning on this lot prevents new commercial development on the northern portion of this lot or expansion of the existing business. Extent to which removal of the restrictions will detrimentally affect nearby property: Further retail/commercial development is likely to increase traffic onto this lot. The standards for screening, landscaping, and lighting in the City Codes, in addition to the conditions set forth for approval of the zone change, should provide appropriate buffering for the home to the north. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area as low density residential. However, the MAPC has an unofficial policy of supporting the expansion of existing businesses when appropriate. Impact of the proposed development on community facilities: The applicant's request should not have a negative impact on community facilities, but there is potential for more than a minimal impact on the traffic in the immediate area.) I move that we recommend to the governing body that request be approved, subject to the provisions of a Protective Overlay with the following conditions:

1. The area to be rezoned shall be limited to those uses permitted in the "NR" Neighborhood Retail district, parking for uses permitted in that district, and Construction Sales and Service. Signage on the north half of Lot 1, Sinclair Addition, shall be limited to those signs permitted in the "NR" district.
2. The applicant shall submit a landscape plan to the Director of Planning for approval prior to development. This plan shall identify the trees along the north property line to be preserved, and include a 6- to 8-foot fence 10 feet south of the north property line with a landscaping buffer north of the fence to be maintained by the property owner. A landscape street yard is required on the west boundary of the property adjacent to Wood Lane right-of-way.
3. Access to all of Lot 1, Sinclair Addition shall be limited to one driveway constructed to city standards of 30 feet.
4. The applicant shall dedicate, by separate instrument, 4 feet of additional utility easement, 2 feet on either side of the existing 16-foot utility easement, thus upgrading this utility easement to current city standards.

**LOPEZ** moved, **WARREN** seconded the motion, and it carried unanimously 9-0.

-----

Item taken out of order:

- 7a. **Case No. Z-3356** – Carriage Plaza LLC c/o Mike Boyd (Owner/Applicant); Austin Miller c/o Tim Austin (Agent), request zone change from "LC" Limited Commercial to "GC" General Commercial; and
- 7b. **Case No. DP-50 Amendment #3** – Carriage Plaza LLC c/o Mike Boyd (Owner/Applicant); Austin Miller c/o Tim Austin (Agent), request an amendment to the west 395 feet of Parcel 2 of the carriage House Plaza C.U.P. to allow outdoor vehicle and equipment sales and warehousing on property described as:

The West 780 feet, more or less, of Lot 5, Block 2, Carriage House Plaza 2<sup>nd</sup> Addition, City of Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of Tyler and McCormick.

**SCOTT KNEBEL**, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting an amendment to the west 395 feet of Parcel 2 of the Carriage House Plaza C.U.P. and a zone change to "GC" General Commercial on this same property to allow outdoor vehicle and equipment sales and warehousing on a 3.9 acre platted tract developed as the Crosstown West shopping center, located at the northeast corner of Tyler and McCormick. The applicant is proposing to use the site for an Internet-based business (TheMerc.com) which matches buyers and sellers of second-hand merchandise (including vehicles and equipment) and serves as a broker for the transaction and a drop-off/pick-up point for the merchandise.

The subject property is currently zoned "LC" Limited Commercial and is limited by the Carriage House Plaza C.U.P. to the following uses: shopping center and/or offices, professional personal services, comparison and convenience shopping, and outdoor overnight parking of accessory vehicles. The "GC" General Commercial zoning district requested permits outdoor vehicle and equipment sales and warehousing by right, and the requested amendment to the C.U.P. is needed to add these more intensive uses to the list of permitted uses on Parcel 2.

North of the site is vacant property zoned "NR" Neighborhood Retail and duplexes and apartments on property zoned "TF-3" Two Family Residential and "MF-29" Multi-family Residential. To the east, and part of the Carriage House Plaza C.U.P., is the remainder of the Crosstown West shopping center, Home Depot, and a Davis-Moore vehicle sales lot under construction on property zoned "LC" Limited Commercial and "GC" General Commercial. South of the site is a bank, offices, a liquor store, and a convenience store on property zoned "LC" Limited Commercial and "GC" General Commercial. To the west is a church and single family residences on property zoned "SF-6" Single Family Residential.

The applicant has submitted a site plan showing the proposed changes for the west 395 feet of Parcel 2, that shows a fenced vehicle and equipment sales lot totaling 27,200 square foot located west of an existing building, and a portion of that existing building totaling 45,000 square feet to be used for warehousing, retailing, offices, and a second hand store. Customer and employee parking is located south of the sales lot and the existing building.

To limit the impact of the proposal on surrounding properties, planning staff recommends approving the zone change to "GC" General Commercial and amending the permitted uses to allow outdoor vehicle and equipment sales and warehousing only for that portion of Parcel 2 where the applicant has indicated these activities will be undertaken. Planning staff does not recommend changing the zoning or the permitted uses for that portion of Parcel 2 that the applicant indicates will be used for customer and employee parking. Planning staff also recommends some conditions of approval regarding fencing, signage, landscaping, lighting, noise, and display area to further limit the impact of the proposal on surrounding properties.

**CASE HISTORY:** The Board of City Commissioners on December 2, 1980 approved The Carriage House Plaza C.U.P. There have been several adjustments to the C.U.P. which include adding permitted uses to existing Parcel 2 as well as clarifying fencing requirements of the outside sales areas. On June 9, 1998, the Wichita City Council approved a request for a zone change from "LC" Limited Commercial and "SF-6" Single-Family Residential to "GC" General Commercial and "LC" Limited Commercial. At the same time, they approved an Amendment to the C.U.P. that added 10 acres to the C.U.P. and revised the permitted use list and other conditions to accommodate the development of Home Depot. On August 24, 1999, the Wichita City Council approved an Amendment to the C.U.P. which added outdoor vehicle and equipment sales to the permitted uses for Parcels 4 and 6 to accommodate a Davis-Moore vehicle sales lot. On September 28, 1999 an Administrative Adjustment was approved to increase the number of buildings allowed on Parcel 2 from two to three. On December 27, 1999, an Administrative Adjustment was approved to decrease the front setback on Parcel 2 from 65 feet to 35 feet. On January 6, 2000, an Administrative Adjustment was approved to allow the prevailing architectural pattern on Parcel 4 to differ from the other parcels in the C.U.P.

**ADJACENT ZONING AND LAND USE:**

NORTH: "NR, TF-3, & MF-29" Vacant, Duplex, and Multi-family  
SOUTH: "LC & GC" Bank; Office, General; Retail, General; and Convenience Store  
EAST: "LC & GC" Vacant; Retail, General; and Vehicle and Equipment Sales, Outdoor  
WEST: "SF-6" Church and Single Family

**PUBLIC SERVICES:** This site has access to McCormick, a three-lane arterial with 1997 traffic volumes that are not available. The site also has access to Tyler, a five-lane arterial with 1997 traffic volumes of 17,650 vehicles per day. The 2030 Transportation Plan estimates the volumes on Tyler to increase to 20,400 vehicles per day. Municipal services are currently provided to this site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit a legal description for the property to be changed to the "GC" General Commercial zoning district that includes approximately the west 395 and the north 295 feet of Parcel 2.
2. The list of permitted uses for Parcel 2 shall be modified to add outdoor vehicle and equipment sales and warehousing as permitted uses only on property in the "GC" General Commercial zoning district.
3. General Provision #5 of the Carriage House C.U.P. shall be modified to add Parcel 2 to the list of parcels for which a landscape plan is required to be submitted and approved by the Planning Department prior to the issuance of any building permits.
4. Cars and small trucks shall be the only vehicles permitted for display within 50 feet of the west property line of Parcel 2.
5. Any fencing of the outdoor vehicle and equipment sales area shall be of wrought iron or similar materials that are approved by the Planning Director.
6. No outside storage of salvaged vehicles or parts shall be permitted in association with new and used automotive sales, leasing, and service.

7. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-ways.
8. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building.
9. Only those signs permitted in the "LC" zoning district and the Carriage House C.U.P. shall be permitted on this site. No temporary display signs are permitted on any parcel developed with auto sales, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
10. Exterior audio systems shall be prohibited.
11. There shall be no elevated platforms for the display of vehicles.
12. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
13. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
14. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-50) includes special conditions for development on this property.
15. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are commercial activities located to the south and east on property zoned "LC" Limited Commercial and "GC" General Commercial, as well as an expressway less than ¼ mile to the south. West of the site is a church and single family residences on property zoned "SF-6" Single Family Residential. North of the site is vacant property zoned "NR" Neighborhood Retail and duplexes and apartments on property zoned "TF-3" Two Family Residential and "MF-29" Multi-family Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial is currently developed with uses that are permitted in the C.U.P.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of the C.U.P. which would limit signage, lighting, and noise, and require landscaping per the "landscape ordinance."
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Tyler, and the conditions of the C.U.P. have provisions which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located less than ¼ mile north of Kellogg in an area where auto-related commercial uses already exist.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**GAROFALO** "Is there anyone here to speak on this item, other than the applicant? Is the applicant here? We are trying to speed this up before we run out of a quorum."

**TIM AUSTIN** "We are in agreement with staff. I visited with Scott a little bit before the meeting and just had a couple of clarifications on verbiage, but we are okay with staff's conditions of approval."

**SCOTT KNEBEL**, Planning Staff "Let me mention one thing that Mr. Austin brought up. On Condition No. 4, where it says 'cars and small trucks', I would recommend that we use a defined term there, which is 'passenger vehicles shall be the only vehicles permitted for display within 50 feet of the property line'. They had indicated that there might be an interest to have some things that might not necessarily be considered a car or small truck, such as a boat or something along those lines. Marvin might speak to that. That was one of the conditions that he had mentioned."

**KROUT** "They may want to put boats out there along the property line?"

**AUSTIN** "That would be a possibility. I talked with my client on that and just basically his thought is that the smaller stuff is going to be in front any way because of the visibility."

**GAROFALO** "Do any Commissioners want to ask any questions?"

**OSBORNE-HOWES** "I was really going to grump about this, but I won't."

**KROUT** "Did you say no chain-link fencing?"

**KNEBEL** "Yes."

**KROUT** "And that is acceptable?"

**KNEBEL** "Yes."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There are commercial activities located to the south and east on property zoned "LC" Limited Commercial and "GC" General Commercial, as well as an expressway less than ¼ mile to the south. West of the site is a church and single family residences on property zoned "SF-6" Single Family Residential. North of the site is vacant property zoned "NR" Neighborhood Retail and duplexes and apartments on property zoned "TF-3" Two Family Residential and "MF-29" Multi-family Residential. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial is currently developed with uses that are permitted in the C.U.P. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of the C.U.P. which would limit signage, lighting, and noise, and require landscaping per the "landscape ordinance." Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Tyler, and the conditions of the C.U.P. have provisions which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located less than ¼ mile north of Kellogg in an area where auto-related commercial uses already exist. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall submit a legal description for the property to be changed to the "GC" General Commercial zoning district that includes approximately the west 395 and the north 295 feet of Parcel 2.
2. The list of permitted uses for Parcel 2 shall be modified to add outdoor vehicle and equipment sales and warehousing as permitted uses only on property in the "GC" General Commercial zoning district.
3. General Provision #5 of the Carriage House C.U.P. shall be modified to add Parcel 2 to the list of parcels for which a landscape plan is required to be submitted and approved by the Planning Department prior to the issuance of any building permits.
4. Passenger vehicles shall be the only vehicles permitted for display within 50 feet of the west property line of Parcel 2.
5. Any fencing of the outdoor vehicle and equipment sales area shall be of wrought iron or similar materials that are approved by the Planning Director.

6. No outside storage of salvaged vehicles or parts shall be permitted in association with new and used automotive sales, leasing, and service.
7. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-ways.
8. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building.
9. Only those signs permitted in the "LC" zoning district and the Carriage House C.U.P. shall be permitted on this site. No temporary display signs are permitted on any parcel developed with auto sales, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
10. Exterior audio systems shall be prohibited.
11. There shall be no elevated platforms for the display of vehicles.
12. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
13. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
14. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-50) includes special conditions for development on this property.
15. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

**WARREN** moved, **JOHNSON** seconded the motion.

**GAROFALO** "Is there any discussion?"

**VOTE ON THE MOTION:** The motion carried with 9 votes in favor. There was no opposition.

6. **Case No. SCZ-0801** – COXCO LLC c/o Steve Cox (Owner/Applicant) and Savoy Ruggles & Bohm PA c/o Mark Savoy (Applicant) request zone change from "LC" Limited Commercial and "SF-20" Single-family residential on property described as:

The East 20 acres of the West 30 acres of the Southwest Quarter of the Southwest Quarter of Section 2, Township 27 South, Range 1, Range 1 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas. Generally located north of 21<sup>st</sup> Street North and east of Hoover.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant requests a zone change from "LC" Limited Commercial and "SF-20" Single Family Residential to "LI" Limited Industrial on a 20 acre unplatted tract located north of 21<sup>st</sup> Street North and east of Hoover. The applicant proposes to create the 11 lot "Zoo Business Park" for developing manufacturing, outdoor storage, warehousing, welding or machine shop, and wholesale or business services businesses.

The surrounding area is characterized by mixed-use suburban residential and commercial/industrial development; agricultural land; and regional recreational facilities. Property to the north is zoned "SF-20" Single Family Residential and is developed with single family residences and manufactured homes on large lots. Property to the south is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with a self service storage warehouse and agricultural land owned by the City of Wichita for future use as a water pump station and storage facility. Further to the south across Zoo Boulevard is the

Sedgwick County Zoo. West of the site is a mixture of commercial/industrial businesses, single family residences, manufactured homes, and agricultural land on property zoned "LI" Limited Industrial, "LC" Limited Commercial, and "SF-20" Single Family Residential. East of the site is agricultural land with single family residences, manufactured homes, and sand and gravel mining operations on property zoned "SF-20" Single Family Residential.

The applicant submitted a preliminary plat (S/D 00-07 – Zoo Business Park), which was heard by the Subdivision Committee on February 3, 2000. The preliminary plat indicates that the property is proposed to be developed as an 11-lot business park with industrial businesses on lots ranging in size from approximately 1 acre to approximately 3.5 acres. Access to the lots is to be from an internal street and public water and sewer service will be guaranteed for extension to the site.

To reduce potential detrimental impacts of this proposed development on neighboring properties, planning staff is recommending approval of "IP" Industrial Park zoning rather than the requested "LI" Limited Industrial zoning. The purpose of the "IP" Industrial Park zoning district is to accommodate limited commercial services, research and development, administrative facilities, and industrial and manufacturing uses that can meet high development and performance standards. All of the uses proposed by the applicant are permitted in the "IP" Industrial Park zoning district. Also, this property is adjacent to the Wichita city limits, so it should be annexed and developed under the city landscape requirements.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20"	Single Family, Manufactured Home
SOUTH: "LC & "SF-6"	Self Service Storage Warehouse, Agriculture
EAST: "SF-20"	Agriculture, Mining
WEST: "SF-20", "LC" & "LI"	Single Family, Manufactured Home, Agriculture, various commercial/industrial s businesses

**PUBLIC SERVICES:** The site has access to 21<sup>st</sup> Street North, which has current traffic volumes of 1,600 vehicles per day. The 2030 Transportation Plan estimates the volumes will increase to 4,600 vehicles per day. The site currently does not have public water or sewer service, but the applicant will guarantee the extension of public water and sewer to site as a part of the platting process. Development of this site without public water and sewer service should be discouraged due to potential negative impacts on ground water in the area, which serves the Sedgwick County Zoo.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The update to the Comprehensive Plan, now in progress, also identifies this area as appropriate for "Low Density Residential" development; however, the update also indicates that a new area approximately ¾ mile north of this site is appropriate for major industrial development in the future. The Industrial Locational Guidelines of the Comprehensive Plan indicate that the factors to be considered when locating industrial uses are: the characteristics of the individual use, the surrounding uses, the zoning district, and the degree to which the specific use would clash with adjacent uses. In this case the applicant is proposing smaller, less intensive industrial uses that are generally more compatible with surrounding residential uses. The uses surrounding this site already exhibit a mixture of commercial/industrial uses with residential uses, indicating a general acceptance of mixed-use development in the area. The zoning district proposed by planning staff ("IP" Industrial Park) supports industrial uses that can meet high development and performance standards. Industrial development that can meet such high development and performance standards is less likely to clash with adjacent residential uses than the "LI" Limited Industrial zoning district requested by the applicant.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for "LI" Limited Industrial be DENIED, and if the MAPC so chooses, the property be rezoned "IP" Industrial Park subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by mixed-use suburban residential and commercial/industrial development; agricultural land; and regional recreational facilities. Property to the north is zoned "SF-20" Single Family Residential and is developed with single family residences and manufactured homes on large lots. Property to the south is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with a self service storage warehouse and agricultural land owned by the City of Wichita for future use as a water pump station and storage facility. Further to the south across Zoo Boulevard is the Sedgwick County Zoo. West of the site is a mixture of commercial/industrial businesses, single family residences, and manufactured homes, and agricultural land on property zoned "LI" Limited Industrial, "LC" Limited Commercial, and "SF-20" Single Family Residential. East of the site is agricultural land with single family residences, manufactured homes, and sand and gravel mining operations on property zoned "SF-20" Single Family Residential.
2. The suitability of the subject property for the uses to which it has been restricted: A majority of the property is zoned "SF-20" Single Family Residential the site could be developed with single family residences upon the extension of public water and sewer service.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "IP" Industrial Park zoning district recommended by planning staff accommodates industrial uses that can meet high development and performance standards and is much more likely to limit detrimental impacts on neighboring properties than the "LI"

Limited Industrial zoning district requested by the applicant. This is especially important given the close proximity of this site to the Sedgwick County Zoo, which is one of the top tourist attractions in the State of Kansas.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The update to the Comprehensive Plan, now in progress, also identifies this area as appropriate for "Low Density Residential" development; however, the update also indicates that a new area approximately ¾ mile north of this site is appropriate for major industrial development in the future. The Industrial Locational Guidelines of the Comprehensive Plan indicate that the factors to be considered when locating industrial uses are: the characteristics of the individual use, the surrounding uses, the zoning district, and the degree to which the specific use would clash with adjacent uses. In this case the applicant is proposing smaller, less intensive industrial uses that are generally more compatible with surrounding residential uses. The uses surrounding this site already exhibit a mixture of commercial/industrial uses with residential uses, indicating a general acceptance of mixed-use development in the area. The zoning district proposed by planning staff ("IP" Industrial Park) supports industrial uses that can meet high development and performance standards. Industrial development that can meet such high development and performance standards is less likely to clash with adjacent residential uses than the "LI" Limited Industrial zoning district requested by the applicant.
5. Impact of the proposed development on community facilities: The site currently does not have public water or sewer service, but the applicant will guarantee the extension of public water and sewer to site as a part of the platting process. Development of this site without public water and sewer service should be discouraged due to potential negative impacts on ground water in the area, which serves the Sedgwick County Zoo.

**JOHNSON** "Mr. Chair, I have a conflict of interest on this item and will be stepping down."

**KNEBEL** "The applicant has already submitted a plat for this property, which shows it being developed into an 11-acre Zoo Business Park, the name of the proposed addition. Staff has technically recommended denial for this, since the published zoning requested was Limited Industrial. Staff is recommending instead that the Planning Commission approve Industrial Park zoning. The primary purpose of that is that it will hold this development to higher standards than the traditional Limited Industrial zoning. It is actually the type of zoning that is designed and intended for the type of use that the applicant has proposed and has indicated that they are wanting to develop. The area is indicated in the Comprehensive Plan as being appropriate for low density residential. As you can see, in the staff report, I have gone through an analysis of the factors that should be considered when locating industrial uses, and staff feels that with industrial park zoning, this particular site does meet those characteristics. I am available for questions."

**OSBORNE-HOWES** "So what you are saying is that you would support approval of the Industrial zoning?"

**KNEBEL** "The Industrial Park zoning, yes. The applicant has actually requested Limited Industrial. It is my understanding, and I will let them speak to that, but that they are agreeable to the Industrial Park zoning."

**PLATT** "Is a representative from the Zoo going to be here speaking?"

**KNEBEL** "No. We have been in contact with them, and they seem okay with this. I sent them the staff report on Monday, discussed it with them briefly, and they didn't seem to have any great concerns over it."

**PLATT** "That was my next question."

**KNEBEL** "I also might mention that their position on that issue was predicated on the development being connected to the public water and sewer. They were not interested in any private water and sewer service at the site."

**LOPEZ** "In Subdivision Committee, we approved no access to Lot 1 off of 21<sup>st</sup> Street, and this drawing doesn't show that."

**KNEBEL** "This is the plat that was submitted to the Subdivision. There has not been another plat submitted."

**LOPEZ** "Okay, but in this form here, we approved one access to Lot 1 off of the drive there, not off of 21<sup>st</sup>. We approved one access to Lot 2 with an emergency access at the back."

**KNEBEL** "I understand that. This was prepared before you heard the subdivision case."

**KROUT** "This is just to give you a general idea of what they have in mind for the layout. We know that the plat is working its way through the Subdivision Committee, and there may be some changes to the details."

**GAROFALO** "Explain to me, and maybe some of the others why the 'IP' zoning and not the 'LI'. What advantage or benefit? I am not sure I understand."

**KNEBEL** "The primary differences are the list of permitted uses. The 'IP' zoning is intended to create a business park rather than allowing a very mixed use type of commercial and industrial development, which is allowed in Limited Industrial, which in addition to permitting industrial uses also permits a wide range of commercial uses like hotels and retail, and those types of things that tend to generate more traffic than an industrial park would. And then Limited Industrial also permits things such as

group homes, correctional residences, cemeteries, jails and those types of things, which are not permitted in the Industrial Park zoning."

**GAROFALO** "So it might be aesthetically more pleasing?"

**KNEBEL** "Yes, it would be more aesthetically pleasing, and also would tend to limit the businesses to those that generated less traffic and would provide a more cohesive development that was more business oriented rather than a mixed use type where you would, perhaps, have some retail businesses in there or other types of businesses. And quite frankly, the applicant submitted a requested list of uses. If you will look at the Industrial Park zoning, it fits the requested uses exactly."

**OSBORNE-HOWES** "Did the Zoo take a position? Have you actually heard from them? I know they are not here. Oh, the Zoo is here."

**GAROFALO** "Okay. Are there any other questions of Scott? Okay, we will hear from the applicant or agent, then."

**MARK SAVOY** "I am with Savoy, Ruggles and Bohm, representing the applicant. I have some additional aids here for you. And if any of the neighbors are here, I have some copies that I can give them."

Basically, we are in agreement with staff comments. We did have a preliminary plat go before Subdivision Committee last week, and I think we were in agreement with most of the comments there. I think they bent a little and we bent a little, and we got past that hurdle. We still have to come back with the final plat. Since the Zoo is represented here, I won't try to speak for them, but the property owner did contact the Zoo early on and talked to them. He has dealt with the Zoo previously with his business and they have concerns about groundwater pollution and so forth.

His conversation with them, I think, relaxed them as to what was going to happen here. In the platting process, at the Subdivision level, we did concur with the fact that we would request sanitary sewer and water extension to the property. At the present time, there is no water or sewer very close. The City, and I am not current as to what their latest status on their studies are, but they are doing studies on being able to provide sewer and water to that entire area. We want to participate in that. The only thing we ask, and we are primarily interested in the developing on Lot 10, the property owner is wanting to build his business there. The rest if the future, when you are able to get sewer and water to it satisfactorily to do that construction.

The County Health Department will allow us to put in a holding tank, not a septic field, that would cause pollutants, but a holding tank that would have to be pumped on a fairly regular basis to haul waste water off. But early this week, Scott got hold of me and said he had gotten an E-mail from one of the neighbors and they were real concerned about the zoning, and felt like they had had a fairly short notice on what we are doing. I don't know whether they had been out of town or whether the notices went out late, or if they received it late or what.

They had asked us about the possibility of attending a meeting with them and we E-mailed a note back that we were willing to do that. Unfortunately, their meeting was...the time that they were hoping to use was tonight at about 7:00 o'clock, which would have been after this meeting, so we weren't quite sure whether to go through with the meeting today. I hadn't heard from them...I hadn't been back to the office since about 11:00 o'clock, so I don't know if I received anything after that.

We are willing to, and since we hadn't heard anything, we decided to go ahead and go through with the case. Now that there are only eight members present, that kind of bothers me a little bit. I think some of the neighbors did show up, and I am sure they will want to speak to this. We would like to say that we are certainly willing to show them what we are doing. In all of our early conversations with the Planning Department, the indications were that they were in favor of what we were doing. The one overall map didn't show the property to the south that had a Conditional Use on it, if you will notice that on there. I think the Conditional Use was basically for probably a sand extraction operation originally, but that is the piece of property that the City of Wichita now owns, and as far as I know, they are planning on putting a City water facility there on that property, which I assume is kind of an industrial use. That may have been what led everybody a little bit to realize we are going to be facing that type of use and agreeing that maybe industrial is a good use for us.

As stated by Scott, the Industrial Park is a lighter use and probably a little more compatible and we are certainly agreeable with that. The dream is, on this, are the lighter type uses. No heavy manufacturing or things like that. If you have any questions, I will be glad to answer them."

**GAROFALO** "Mark, what will go in here? What is planned at this point?"

**SAVOY** "The one structure that is planned at the moment, and this is the only thing that is truly planned, but it is in fairly deep planning. This plan was produced for the owner as one of his ideas for what they might do. He has not approved this plan, in fact he doesn't really quite care for some of the things on the structure. He has some ideas to change. I don't know that the color scheme is particularly approved. But more than anything else, he has done some fairly neat planning on this. It is not a dream, it is a reality. This is where he wants to put his business."

And speaking for the other lots, there is no definite plans, no bites. It is not platted yet, there is no sewer and water to it yet and to market it now would be a little premature."

**GAROFALO** "Mark, since you haven't had an opportunity to visit with the neighbors and apparently the neighbors would like to do that, I guess, would you have any problem with a deferral for a couple of weeks so you can sit down with them and talk?"

**SAVOY** "I don't know that I would, except that I have waited here for several hours and they have waited for several hours, and I don't want to ask for a deferral. I think they might want to have an opportunity to speak to you, even though I would feel better if there was a full Planning Commission here, personally, for a vote, but I would be able for them to be able to talk, since I they have been sitting here as long as I have. I'm sure they don't want to go away empty-handed.

I don't mind if they speak, but I am also telling you that I am not particularly opposed to a deferral. I don't even really know if they really have true objections, or if they were concerned and didn't know what we were doing."

**GAROFALO** "How many people would like to speak on this case? Just two? Okay. Are there any questions for Mark?"

**WARREN** "Yes. Are you still going to use your one entry that we allowed you on 21<sup>st</sup> Street?"

**SAVOY** "Yes, sir."

**GAROFALO** "Are there any other questions of Mark? Is there anyone else to speak in favor of this application? Anyone else to speak in favor? Anyone to speak in opposition? Okay, sir, take the podium and state your name and address."

**JOHN PETERSON** "I am not much of a speaker, but we just live east of that property you are talking about. We own 15 acres along there. I worked in a machine shop for probably 25 years, and I know the waste that comes off of the machine shop, a lot of oil contaminants and stuff like that. We have horses and other animals right along side there, and I am afraid that it might pollute our water. Right now, our water is getting worse every year because they get all of these sand pits built around there and you get all of that contaminant coming into the lakes, etc.

We have well water, and like they say, the water is about 12 foot, but we are down probably about 25 or 30 feet. But still, the water is getting worse every year, it seems like because they get more sandpits in the area right there. I have talked to my son; he used to work at Ritchie's over there. What they do over there, he says, if they have any contaminants, they just dump it in the dang lake. That is where we are getting the stuff for our well water. So, all I am interested in is getting better water out there and if something like this comes in there, we are going to have a lot more contaminants, I think, so I am opposed to it. That is all I really have to say."

**GAROFALO** "Are there any questions of the speaker? Okay, thank you. Next speaker."

**DR. BEN HUIE** "Good evening Planning Commission. I am an environmental scientist here in Wichita. For the record, my office address is BTH Consulting at 12011 Rolling Hills Drive in Wichita 67235. My work in this area focuses on groundwater contamination. I served the City of Wichita on the Gilbert and Mosley Technical Advisory Committee, as well as the McConnell Air Force Base Technical Review Committee.

I stand before you this evening in opposition to the proposed zoning change. The site in question is inappropriate for any kind of industrial use. These areas in the Arkansas River Valley have sediments that are the most productive water bearing formations in Sedgwick County. This valley contains most of the usable groundwater in the County. Due to the course nature of these sediments, the aquifer is particularly susceptible to contamination. Depth of the groundwater in the area is less than 10 feet. Water visible in the area's numerous sandpits is an expression of that groundwater.

Any industrial operation by its very nature, potentially involves the use of hazardous chemicals. A good example of this is the use of degreasing solvents, such as trichlorethelene in machine shops and manufacturing facilities. Even when precautions are taken, accidents can occur, leading to contamination of the groundwater. Throughout Sedgwick County, we see the results of such groundwater contamination. Gilbert and Mosley, 13<sup>th</sup> and Washington, 29<sup>th</sup> and Meade, 57<sup>th</sup> and North Broadway, Brooks Landfill, Chapin Landfill, West Street south of Kellogg, to name only a few.

As a result of this contamination, large quantities of precious resource have been rendered useless. We are now spending tens of millions of dollars attempting to contain this pollution. An actual clean up and restoration of this resource will not occur. The Sedgwick County Zoo, located only one-half mile from the site relies on local groundwater for its operations. Their pumping creates a cone of depression, which will tend to draw any contamination towards its wells. We cannot afford to jeopardize this crown jewel of Sedgwick County. In addition to the Zoo and its water use, the City of Wichita is planning a water treatment facility across the street from the site. While details about possible use of local groundwater for this facility has not been determined or announced, testing of water in the area has shown it to be suitable for drinking water use. It has been argued that we need to, and I quote 'for the proposed plan, promote the expansion of the industrial base for the provision of suitable industrial sites'.

Our ample industrial site is already in place in Sedgwick County. Many of these sites are focused along major transportation corridors, such as Route 81; I-135 from Park City down to Haysville; the south side of Kellogg between Wichita and Goddard, and the area around the airport. While we do need to provoke the redevelopment of many of these areas into new productive uses, we do not need to develop new industrial sites in Sedgwick County. Where these existing sites are contaminated, we need to work with the EPA in its Brownfields programs to rehabilitate them. This will provide a sufficient number of sites for the expansion of our industrial base without needlessly endangering our limited water resources. Many of us here in Sedgwick County, including the City of Wichita, are calling upon the State legislature to protect the Equus beds by enacting a moratorium on hog farm lagoons. We should exercise similar stewardship of this southward extension of the Equus beds right here in Sedgwick County. Groundwater is a community resource and might be considered to be a community facility under the zoning rules. I therefore ask this Commission to consider the impact of this proposed rezoning on this resource and to reject the request. Let us not repeat the mistakes we have made far too often in the past.

Just noting from today's Wichita Eagle, 'Mayors ban together to press agenda in Topeka', and quoting from the Mayor of Newton 'protecting the Equus beds groundwater formation is the group's top priority'. And they go on to discuss concerns from the industrial contamination near 57<sup>th</sup> and Broadway in Wichita. Actually, I think that is probably north Sedgwick County.

But the concern is the continued contamination of water resources will limit our future growth in Sedgwick County. And in another item from today's paper 'Valley Center tying into Wichita water'. Where are we going to get that water? We do have some resources left here in the County, let us protect them. Thank you."

**GAROFALO** "Are there any questions of the speaker? No questions. Thank you. Is there anyone else here to speak in opposition? The gentleman from the Zoo, would you like to address us? We certainly would like to know the Zoo's position regarding this."

**JIM MARLETT** "I am the Assistant Director at the Sedgwick County Zoo. We do have a tremendous concern about the quality of groundwater. It is the water that our animals drink. We have a degree of ambivalence about the project, but we would have to defer to people who know more than we do about the potential for groundwater contamination from this site.

One of the things that we were concerned about was the lack of sewer service, and I understand is part of the proposal that it have sewer and water before anything is constructed. I guess I should say that while we aren't really in favor of the project, but we are not sufficiently knowledgeable as to how much potential contamination there is to really oppose it. I would have to defer to those who know much more about groundwater contamination than we do. We don't want the groundwater contaminated."

**PLATT** "Sir, I have a question. Do you have any concerns at all about an industrial area being developed from an aesthetic standpoint that close to the entrance to the Zoo?"

**MARLETT** "It looks to us as though the development is far enough away from the Zoo itself that if it was a reasonably attractive development that it would be less of a concern to us than it would be to the neighbors who are much closer than we are. There is, at present, a storage facility being built across the street from the Zoo, and my understanding is that this proposed park would be to the north of that facility. So it will be a little ways away and we would hope that the development would be attractive enough that it wouldn't detract substantially from the entrance to the Zoo.

Some of the properties around that area are not overwhelmingly attractive as it is. Also, Cox Machine Shop is already upstream of the Zoo, so that weighed into our thoughts of relative neutrality about the issue. In that they already are a neighbor, I would assume that the new development would represent an expansion of that. I won't say that we have absolutely no concerns about the groundwater quality, I guess is what I would say."

**OSBORNE-HOWES** "So the Zoo Board has not taken a formal position yet?"

**MARLETT** "The Zoo has not taken a formal position."

**OSBORNE-HOWES** "Have they come to you and shown you this information and shared this with you?"

**MARLETT** "We have seen the staff recommendation."

**OSBORNE-HOWES** "The reason I am asking that is that in the past, the Zoo and the Zoo Board has become very proactive in trying to protect the entrance and protect the area and protect the groundwater, so I am a little surprised."

**MARLETT** "We are, too, but I am probably not the best person to ask about the expansion on the position, but I think this has caught us a little off guard as well, and my boss has been somewhat satisfied that the chances of contamination are lower than previous proposals."

**HENTZEN** "Two thoughts. How do you like those entrances to the Zoo?"

**MARLETT** "Why, those are real fine."

**HENTZEN** "I remember when they were approved by the County Commission."

**MARLETT** "Monuments."

**HENTZEN** "Let me ask you one other thing. What a wonderful Zoo it is. And do you feel that you, running the Zoo are contaminating any groundwater south of you?"

**MARLETT** "We have actually had these discussions at the Zoo. It is one of the reasons that we have begun to move our manure off-site instead of composting it on-site. We have certainly done everything within our power to prevent it because we are pulling groundwater for our animals from that site. So with every effort that we can, we are avoiding contamination. Before we started moving our compost off-site, we also put concrete bedding underneath that compost to prevent percolation and we hope that we never get back into the composting business again. But one never knows."

**GAROFALO** "Are there any other questions of Mr. Marlett? I am told that David Warren is here and that he might be able to answer any questions or might be able to talk to the water problem."

**KROUT** "I asked Dave if he was willing to do that, and he said yes. We have had informal discussions on this kind of land use and this kind of area before with the County Health Department, and they have always said that if public water and sewer was being provided that they felt that the use was going to be controlled, and that is wasn't a contamination problem that we should be concerned about. I'm sorry that we don't have the Health Department here, but Dave is here this evening and he can probably give you his own opinion, and I know what it is on public sewer, that industrial uses are subject to pretreatment and monitoring, and you might want to see what Dave has to say about this one."

**DAVID WARREN** "Good evening, Mr. Chair, Commissioners. I am the Director of Wichita's Water and Sewer utilities. I think the issues that were raised by Dr. Huie are certainly appropriate with regard to certain facilities that might be located out there without the benefit of a public sewer. To the extent that these facilities would be served by a public sewer, I think that the issue with regard to concerns about groundwater contamination really are not an issue. Our industrial clients in Wichita are very closely and carefully monitored by our industrial pretreatment program, which requires industries to maintain a manifest of chemicals that are used to show how these chemicals were disposed of.

Their effluent from their facilities are monitored in the cases of categorical industries that meet certain standards defined in law by the United States Environmental Protection Agency. They are absolutely required to have pre-treatment systems. They can only discharge certain amounts of contaminants and pollutants into the sewer system. So I think, from the standpoint that this particular facility may be involved, I think it certainly should be a requirement that as part of their development process that they would receive public sewer in order to develop this.

On our plans for development of sewer service in this area, we are within a couple of months of finalizing the sewer Master Plan for extending sewer mains into this area to provide service. Part of that is contingent upon the demand for those services and when plats such as this one would be developed and there would be a need for the extension of the sewer service into there. But we are within just a few months of having our plans for how this area will be served finalized and being able then to proceed with the extension of mains and laterals in the areas they are petitioned. I will be glad to answer any questions, Commissioners."

**RAY WARREN** "You don't have a problem, then with this temporary use with the holding tank?"

**DAVE WARREN** "No, sir. Again, I think it needs to be very carefully permitted and manifested so that we are assured that those chemicals are contained and that as soon as public sewer becomes available, that they are required immediately to connect to the same."

**RAY WARREN** "Very good."

**GAROFALO** "Are there any other questions? Thanks, David."

**DAVE WARREN** "Yes, sir."

**GAROFALO** "Okay, the applicant has two minutes for rebuttal."

**SAVOY** "To answer some of your questions, and to thank Mr. Warren for those comments. Those have been our feelings, and we even checked and the sandpit does not appear to be directly connected to Equus beds itself, which surprises me. I thought soap and water, it should be, but it apparently isn't, and it isn't a concern with the Equus beds people.

The existing facility, Cox Machine Shop is just to the west of this property on the north side of 21<sup>st</sup> Street. It has been there for 43 years and has never had a problem with the Zoo. They have been in contact with the Zoo on numerous occasions on monitoring anything that comes off of that site. Cox Machine itself does not use any degreasing agents and doesn't really have a problem in that area. Some machine shops may use materials that are more of a contaminant, but as testified by Mr. Warren, there seems to be a system to take care of that anyway.

The aesthetic appearance of this, and I really didn't want to make a comment on this, but I just can't resist, but when you are driving down 21<sup>st</sup> Street, look over towards the Zoo, not the entrance where the monuments are, but you can kind of see the back yard of the Zoo there, so I am not sure that it couldn't use some improvement. The reason we handed out the picture that we did on this site is that we have a pipeline that is crossing this property and it kind of limits some of our use of the land, so Mr. Cox, the property-owner wanted us to come up with a design that would utilize some of the open space along with that pipeline, and he really has had ideas about providing walking paths and open space for employees. He is really thinking of his own employees, but also the marketability to other users that would come in there.

So that green was a dream of his, it's not eyewash to show you how beautiful this is going to look, but we are trying to design the entry into this area as something that would look pleasing and nice. Something quite different from what you have seen in probably any other business park of any kind, just about. If you have any questions, I will be glad to try to answer them."

**HENTZEN** "Mark, on the gentleman who is here worried about either introducing or adding contamination to the groundwater, are you able to say, for your applicant that you can operate that without adding any contamination to the groundwater?"

**SAVOY** "I think my Mom always said, never say never, but their existing site, the machine shop that is there now has been a concern with the Zoo and they have worked with the Zoo, and I think the Zoo has monitoring wells on their property, and to my

knowledge, they have never picked up any indications of anything coming from that site. So I would have to say that their business, over the past 43 years, has not contributed anything that at least was alarming or concern, or detectable."

**HENTZEN** "Do I understand that you are prepared not to build this thing until the sewer and water get there?"

**SAVOY** "We want to build the one structure, which is where we got the permission to use holding tanks, which all of the fluids would be hauled off from."

**OSBORNE-HOWES** "Will these be metal buildings?"

**SAVOY** "This structure if a metal building design, yes."

**OSBORNE-HOWES** "You were talking about forward thinking and envision and then I see a metal building for an industrial park in the City doesn't do much for me."

**SAVOY** "Well, there are a lot of metal buildings in the City that are commercial as opposed to industrial, but typically, your industrial buildings are fairly large structures in size and that somewhat dictates what you are able to do with the outside of that building."

**GAROFALO** "The current shop, refresh my memory, exactly where is it?"

**SAVOY** "It is about 1400 feet west of this site. It is on the north side of 21<sup>st</sup> Street, just south of Rainbow's United, just west of a business building that Mr. Robles has just built there (indicating), right in here. Rainbow's United has built a nice big building right in here. There is a nice, new office building here, and the plan for this building is not to sell that property as it is. After they have relocated, they are going to clear that property and redevelop it as a business office park."

**GAROFALO** "Thank you. Are there any other questions? Okay, thanks, Mark."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by mixed-use suburban residential and commercial/industrial development; agricultural land; and regional recreational facilities. Property to the north is zoned "SF-20" Single Family Residential and is developed with single family residences and manufactured homes on large lots. Property to the south is zoned "LC" Limited Commercial and "SF-6" Single Family Residential and is developed with a self service storage warehouse and agricultural land owned by the City of Wichita for future use as a water pump station and storage facility. Further to the south across Zoo Boulevard is the Sedgwick County Zoo. West of the site is a mixture of commercial/industrial businesses, single family residences, and manufactured homes, and agricultural land on property zoned "LI" Limited Industrial, "LC" Limited Commercial, and "SF-20" Single Family Residential. East of the site is agricultural land with single family residences, manufactured homes, and sand and gravel mining operations on property zoned "SF-20" Single Family Residential. The suitability of the subject property for the uses to which it has been restricted: A majority of the property is zoned "SF-20" Single Family Residential the site could be developed with single family residences upon the extension of public water and sewer service. Extent to which removal of the restrictions will detrimentally affect nearby property: The "IP" Industrial Park zoning district recommended by planning staff accommodates industrial uses that can meet high development and performance standards and is much more likely to limit detrimental impacts on neighboring properties than the "LI" Limited Industrial zoning district requested by the applicant. This is especially important given the close proximity of this site to the Sedgwick County Zoo, which is one of the top tourist attractions in the State of Kansas. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The update to the Comprehensive Plan, now in progress, also identifies this area as appropriate for "Low Density Residential" development; however, the update also indicates that a new area approximately ¾ mile north of this site is appropriate for major industrial development in the future. The Industrial Locational Guidelines of the Comprehensive Plan indicate that the factors to be considered when locating industrial uses are: the characteristics of the individual use, the surrounding uses, the zoning district, and the degree to which the specific use would clash with adjacent uses. In this case the applicant is proposing smaller, less intensive industrial uses that are generally more compatible with surrounding residential uses. The uses surrounding this site already exhibit a mixture of commercial/industrial uses with residential uses, indicating a general acceptance of mixed-use development in the area. The zoning district proposed by planning staff ("IP" Industrial Park) supports industrial uses that can meet high development and performance standards. Industrial development that can meet such high development and performance standards is less likely to clash with adjacent residential uses than the "LI" Limited Industrial zoning district requested by the applicant. Impact of the proposed development on community facilities: The site currently does not have public

water or sewer service, but the applicant will guarantee the extension of public water and sewer to site as a part of the platting process. Development of this site without public water and sewer service should be discouraged due to potential negative impacts on ground water in the area, which serves the Sedgwick County Zoo.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

**WHEELER** moved, **WARNER** second the motion.

**LOPEZ** "I have a comment and then a question for Marvin. The current Cox Machine Shop, the gentleman acknowledged, has monitoring wells."

**KROUT** "I think those are wells that are on the Zoo property."

**SAVOY** "That is correct. We don't have monitoring wells."

**LOPEZ** "Okay, is it appropriate in a motion, whether they want to or not to recommend putting monitoring wells on the perimeters of this Industrial Park?"

**KROUT** "I really think that the Health Department would not think that it was necessary. You are talking about a temporary holding tank and then going to public sewer. I don't think it would be necessary."

**OSBORNE-HOWES** "Marvin, the metal building in an industrial park in this location?"

**KROUT** "We have a Planning Commissioner who is an expert of metal buildings. If you have been to the Mid-Continent Industrial Park, for example, or other industrial parks, and that is what we wanted to look for was a nice, clean industrial park, you will find metal buildings. I don't object to metal buildings in the context of an industrial park."

**OSBORNE-HOWES** "Would this become an accepted view, since they have turned in, does this become kind of a standard on which we would expect this building to be built?"

**KROUT** "Not unless you would make some specific requirements, no."

**OSBORNE-HOWES** "Is there a way we could do that? Because right now we are looking at this, and we know that any type of building could go there, really. Could we ask that these be accepted as the basic standard as what we would be seeing, as part of the motion? Or is that necessary? I don't want to belabor it."

**WARREN** "I would oppose that. I think these people ought to have a little flexibility. They are already reducing themselves to 'IP' zoning."

**OSBORNE-HOWES** "They have turned this in to us."

**WARREN** "I understand, but that is just to give us a concept rather than a guarantee."

**OSBORNE-HOWES** "I know."

**PLATT** "I want to note that I am very disappointed in the County for what seems to me to be a very cavalier attitude towards the entrance area to the Zoo. I don't like the idea at all of industrial parks being used as the focal point for entrance to our Zoo.

I don't think this is a very attractive building at all, and to say that we will hold the rest of the buildings to this standard seems to me to be a pretty low standard. I just can't find any reason to vote for this proposal."

**HENTZEN** "Commissioner Platt, I would just remind you that this business was there before the Zoo was, and if there is a problem with that, then maybe we ought to find another place for the Zoo. I think the Zoo is wonderful. I think the entrances are nice."

**WHEELER** "If we look at this, this is north, essentially north across the railroad tracks and around the curve from 21<sup>st</sup> Street, which faces the Zoo. I am not even sure it is going to be in direct view. I am not sure."

**GAROFALO** "I have one other question. Where on this site plan would this first building be located?"

**SAVOY** "In the lower right-hand corner. And I am not sure what our view is from Zoo Boulevard, actually. I am not sure you can see this property particularly. There are storage units that are brand new that run from 21<sup>st</sup> South to Zoo Boulevard on the east side of Hoover. There is a building being constructed on the west side of Hoover Road at the present time, on the south side of 21<sup>st</sup> Street. So, this property might actually look better in some cases, than what is being built there now, but it certainly is not going to be unattractive. On top of that, I am not sure you can see it from Zoo Boulevard or that it will be a very predominant feature from Zoo Boulevard.

Cox Machine Shop, where it is right now, is very visible. There is nothing in front of Cox Machine except the old 21<sup>st</sup> Street and then the new 21<sup>st</sup> Street that curves into Zoo Boulevard."

**OSBORNE-HOWES** "Just a response to Commissioner Hentzen. This doesn't really qualify as an expansion to Cox Machine. This is Land Use and we are looking at an Industrial Park. Not that I will vote for or against."

**GAROFALO** "Is there any other discussion? We have a motion and a second."

**VOTE ON THE MOTION:** The motion carried with 7 votes in favor and 1 in opposition  
(Platt). Johnson abstained.

-----

Hentzen left the meeting at 5:43 p.m.

8. **Case No. CU-564** – City of Wichita (c/o David Warren) Professional Engineering Consultants (PEC) c/o Rob Hartman (agent) request a Conditional Use to allow construction of a wastewater treatment plant and associated uses on property described as:

Beginning at the northeast corner of the southwest Quarter of Section 25, Township 26 South, Range 2 west of the 6<sup>th</sup> Principal Meridian, Sedgwick County, Kansas; thence SO°05'17"W along the east line of said southwest quarter a distance of 2606.26 feet; thence N87°40'22"W parallel to the south line of said southwest quarter and being 50 feet north of said south line a distance of 765.11 feet; thence NO2°19'38"W a distance of 1276.29 feet; thence S87°41'44"W parallel to the north line of said southwest quarter and being 1328 feet south of said north line a distance of 1756.38 feet; thence NO°00'00"E parallel to the west line of said southwest quarter and being 50 feet east of said west line a distance of 1329.07 feet; thence N87°41'44"E along the north line of said southwest quarter a distance of 2577.36 feet to the point of beginning. Containing 101.75 acres more or less. Generally located north and east of the northeast corner of 37<sup>th</sup> Street North and 135<sup>th</sup> Street West.

**DALE MILLER**, Planning staff, reviewed the following staff report:

**BACKGROUND:** The City of Wichita is requesting approval of a Conditional Use Permit to allow the construction of a waste water treatment plant, public park and fishery on 101.75 acres of property zoned "SF-6" Single Family Residential. The application area is an "L" shaped parcel, and is located ¼ mile north and 1860 feet east of the intersection of 37<sup>th</sup> Street North and 135<sup>th</sup> Street West (see attached site plan). The application area is currently undeveloped agricultural land. Cowskin Creek winds its way through the site from the west and then south. A lake also exists in the eastern part of the application area. The City of Wichita also owns the rest of the quarter-section except for four other tracts which are approximately 12.5 acres in size.

The treatment plant is to be located in the northeast corner of Parcel 1, occupying approximately 14 acres of the Parcel's 78 acres. Access to the site is to be from 135<sup>th</sup> Street, near the ½ mile line. The treatment plant will generate minimal traffic since it will be a "state of the art" facility and will essentially be an unmanned facility. All of the main treatment plant facilities will be enclosed within a 6 to 8- foot screening wall or fence. The north wall/fence of the facility is to be located 50 feet south of the north property line with a 100-foot building setback. The east wall/fence is to be located 150 feet east of the east property line with a 150-foot building setback. The south wall/fence is 1,950 feet north of 37<sup>th</sup> Street with a building setback located 1,430 feet north of the south property line. The west wall/fence is to be located 1,540 feet east of 135<sup>th</sup> Street with a building setback of 1,300 feet east of 135<sup>th</sup> Street. The extra space located south of the proposed plant provides for future expansion of the facility. A five-foot high berm and a 50-foot wide landscaped buffer are to be located along the north and east sides of the proposed plant. A landscaped strip, but no berm, is to be located on the south. This landscaped buffer is to be planted at one and one-half times the minimum City landscape ordinance requirements. (Minimum landscape buffer requirements are one shade tree or two ornamentals per 40 feet of length) The west side of the plant will be buffered by a park and seven-acre detention pond. This detention pond will receive treated water from the plant as well as controlled drainage from the development. Water from the detention pond would be released to a second existing lake located south of the proposed facility or to the proposed fishery, located in Parcel 2 or to the wetlands area.

A waterfall feature is envisioned as part of the water flow from the plant to the detention pond. The detention pond will have enough excess capacity to hold three days worth of effluent in the event of a significant rain event. A gauging station is to be located on Cowskin Creek to monitor the creek and stop the release of effluent when warranted. All but the southeast corner of the proposed treatment plant will be located out of the FEMA 100-year floodplain, and the entire site will be raised above the floodplain. Height of the tallest structures in the wastewater facility are expected to be 25 feet. The rest of Parcel 1 is to be occupied by a public park, access road, parking, wetlands area, walking paths, wildlife viewing platforms and public use shelters.

Parcel 2 (24 acres) is to contain additional parkland and the fishery. Access to this parcel will be from 37<sup>th</sup> Street. The fishery consists of two pools of water that will be stocked with fish, and a small equipment building. The Department of Wildlife and Parks stock city lakes with fish approximately every two weeks. At this point in time they can only ship in a limited number of fish, as they do not have an adequate holding facility. These two ponds would allow Parks and Wildlife to ship in a larger quantity of fish at lower prices that would be unloaded at this location. These fish would then held at this location until they were transferred to city lakes. Traffic generated by both the park and the fishery uses is expected to be very light when compared to residential or commercial development.

The remaining southwest quarter of the City's ownership is not covered by this application, and would contain additional wetlands and public access areas. A shelter house, parking and walking paths would be constructed in this area. Access to the shelter house would be from 135<sup>th</sup> Street.

Lighting for the facilities will be reflected away from any adjoining residential uses.

There are four residential properties in this quarter-section that are not part of the application. Three of these properties are located just north and east of the intersection of 37<sup>th</sup> Street North and 135<sup>th</sup> Street West. The fourth property is located on the north side of 37<sup>th</sup> Street West, approximately 1,400 feet east of 135<sup>th</sup> street. This last home is located closest to the proposed treatment plant, approximately 1800 feet away. Two other homes are located south of 37<sup>th</sup> Street, 1800 feet east of 135<sup>th</sup> Street. These homes are approximately 2200 south of the proposed plant. Another home is located west of 135<sup>th</sup> Street, 2,200 feet from the plant. Another home is located approximately 2,000 feet northwest of the proposed site. Another home is located approximately 2500 feet northeast of the application area. All land immediately adjoining the application area, except for the four home sites located in the same quarter-section as the application area are used for agricultural purposes and that land is zoned "RR", Rural Residential. The 100- year floodplain extends east and northeast from the proposed treatment plant and will provide additional buffering.

Under the existing Unified Zoning Code, a waste water treatment plant is defined as a "utility major, and requires a Conditional Use in all districts. Public parks, and recreational uses are permitted by right, in all zoning districts.

**CASE HISTORY:** The City of Wichita purchased the property and officially annexed it in 1999. The property is currently unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential	Agriculture
EAST: "RR" Rural Residential	Agriculture
SOUTH: "RR" Rural Residential	Agriculture, large-lot residential
WEST: "RR" Rural Residential	Agriculture, large-lot residential

**PUBLIC SERVICES:** The site has access to 37<sup>th</sup> Street North and 135<sup>th</sup> Street West, both are two-lane sand and gravel township roads. Traffic volumes are not available. The proposed uses would generate a minimal increase in traffic. Water and sewer services are not currently available at this time. Since there will not be full time employees located here, there is not a need for potable water at this time.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this property as "agriculture." The plan contains an objective stating: "Promote the development of a comprehensive set of sanitary sewer systems which provide the most economic and efficient service possible." The plan is not identified in the 1993 adopted plan, but was approved by the Wichita City Council as part of the Northwest Sewer Master Plan.

**RECOMMENDATION:** Wastewater treatment plants typically require a large area of land; land on which to construct the actual facilities and then land to buffer the treatment operations. Obtaining a parcel of land large enough to accommodate a treatment plant is virtually impossible to obtain in developed or developing areas, forcing the siting search for these facilities to suburban and rural areas. An extensive site evaluation process was conducted to identify appropriate sites. This site fell within siting perimeters. Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting and the following conditions:

1. Except for the Operations Building, a six-eight foot screening wall consistent with the zoning code requirements shall enclose the entire treatment plant facility. Colors shall be compatible with those used on the operations building.
2. The applicant shall obtain all federal, state and local permits required prior to beginning plant operations.
3. The site shall be developed and maintained in a manner that is generally consistent with the approved site plan.
4. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area and the adjacent land is zoned "RR" Rural Residential. The bulk of the land in the Conditional Use area will be devoted to open space uses, consistent with the agricultural and large lot residential character of the vicinity. The majority use of the land in the neighborhood is agricultural with approximately nine homes in the vicinity, all at least 1800 feet from the proposed plant.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "RR", Rural Residential, which is primarily intended for large-lot residential uses and similar low intensity uses such as golf courses, parks and private recycling collection stations. Existing permitted uses could be developed on this site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Minimal detrimental effects are anticipated because of "state of the art" equipment the facility will use, and the extensive landscaping, screening and buffering provided. An extensive siting analysis was conducted in an attempt to locate a plant which would affect the fewest number of residences and still be able to serve the area needing service.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the objective stating: "Promote the development of a comprehensive set of sanitary sewer systems which provide the most economic and efficient service possible." A facility is needed to provide additional growth potential for northwest Wichita and Sedgwick County.
5. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, generating little traffic or need for additional services. In fact, the facility will relieve existing area from potential sewer problems due to lines exceeding capacity, and will permit the expansion of sewer service to areas currently without service.

**GAROFALO** "Are there people here who would like to speak on this issue, the waste water treatment facility and park and fishery, aside from the applicant? Two? Okay."

**KROUT** "I wonder if it would be better, just to make sure that we don't lose a quorum, for us to let the people who are here speak for their 5 minutes and get them to indicate their concerns. Then if we have to defer this because of loss of a quorum at 6:00 o'clock, then at least people who are here have had a chance to speak and we can defer it to the next meeting."

**GAROFALO** "Okay, let's do that."

**OSBORNE-HOWES** "Is it expected that we will take a vote today on this, or are we just accepting this information?"

**KROUT** "There probably won't be enough time for you to hold a quorum and get all of the information you need to take a vote, but we need to at least make sure that the public attending gets a chance to speak and then we can carry it over."

**GAROFALO** "All right. Is there anyone here who wants to speak in favor of this Conditional Use permit, other than the applicant? Okay. Is there anyone here to speak in opposition? We have two people, I believe. Okay, if you would take the podium, Ma'am, give your name and address and you have 5 minutes to speak."

**JEANNIE BUCKNER** "I live at 1636 Old Wick Road, on the Cowskin Creek. I don't have an actual speech ready, but I do have a couple of points that I want to bring up and that is that my concern for the location of the sewage treatment plant. I was at the meeting and was able to see the plan for a couple of things. First of all, the existing 37<sup>th</sup> Street bridge, just south of the property that is the sewage treatment plant, that bridge is not going to be able to accommodate, and isn't currently accommodating flood waters. So when floods come down the Cowskin, then the water backs up behind that bridge and will then flood the proposed property. I know that is a wetland area, but I think that most of that property would be under water in a flood situation.

Secondly, in the past, there has been a group who has been opposed to the sewage treatment plant, based on the flooding issue, and we did have a petition that we distributed and it was signed by over 1,000 people in West Wichita. The petition stated 'the undersigned citizens of the City of Wichita and/or Sedgwick County are strongly opposed to the construction of any sewage treatment plant which will discharge into the base of the Cowskin, Calfskin, or Dry Creek. Instead, we encourage the Wichita City Council to reconsider their decision and select a location that will not impact this drainage basin. This was sent to the Kansas Department of Health and Environment (KDHE). There were over 1,000 signatures, and I guess the point that we continue to make is that there is an existing problem with flooding. I know that the City and County are working on that, but there is still going to be a flooding issue, and if there was a way to correct the flooding problem north of the sewage treatment, then that would be something that we would be very interested in discussing, but our concern is that we already have a problem that is not solved and will take many years to solve. In the meantime, a sewage treatment plant will built that will not help the problem in any way. That is where we are coming from. Thanks."

**OSBORNE-HOWES** "So in other words, if they fix the flooding situation north of this plant, you would not be opposed to it?"

**BUCKNER** "From what we have seen, I think that is pretty well the issue and has been the issue all along that the sewage treatment plant, if all goes as is supposed to go, then it should not be adding any water with the wetlands and the pond. We are being told that we should not see any increase of water or negligent increase of water into the creek, the way this has been planned. It is still a concern we have, the flooding issue, and that continues to be thought to be a separate problem, but I still think it is the same problem."

**GAROFALO** "Are there any other questions? Thank you. Next speaker."

**MARK JAMBRA** "Hi. I live at 13130 West 37<sup>th</sup> Street North with my wife and two daughters. It is actually very nicely outlined as the white area here on these maps. Obviously, we own property that is surrounded on three sides by the City of Wichita. We simply oppose any idea of rezoning any parts of this quarter section. We have many concerns that have been detailed in several E-mails to the Planning Commission and to the local media. I will limit today's discussion to three of those concerns.

First of all, we don't want the sewer plant constructed on this site. Although this plant may be state of the art and comply with many regulations, this does not necessarily mean that it will be safe. Viruses, heavy metals and drug metabolites routinely pass through tertiary treatment. Certain toxic substances exist that the EPA currently does not regulate. Those being three of them. We believe that transporting thousands of pounds of human waste to the proposed site will poison our well, a structure that is located within several feet of the property in question. We have young, growing children that use our well as their only source of drinking and bathing water.

Secondly, we have been told by Professional Engineering Consultants that there are plans for major changes to the existing pond, which once again, is nicely shown here on the map. Obviously, we own part of this pond down here, and we simply don't agree with the proposed changes. We do not want the City to wreak havoc on this quiet spot. We do not want it drained, poisoned, or dredged. We do not see how fish destined for public use can be raised in sewer affluent, which is apparently going to happen in this public fishery area. This is not what we call an improvement. We see no acceptable compromise concerning this pond that will satisfy both ourselves and the City.

Lastly, the inclusion of a public park to this site is simply adding insult to injury. I know that many of us view parks as very positive places with smiling squirrels and pretty trees, but in reality, when you go out to these places, who indeed is at parks? You have drug addicts, you have sexual deviants and you have teenage gangs. We simply don't want this kind of individuals as our new neighbors. What will keep these criminals from coming onto our private property, which will be adjacent to this park? We want solid, screening fences to protect us from these individuals.

We obviously have many worries about the proposed rezoning of the land surrounding our property. We fear that raw sewage will certainly overflow directly into our back yard during heavy rains. The proposed park will encourage sexual predators and other undesirable people to trespass onto our home. Who will clean up the trash that will follow the opening of this park? Why did the City find it necessary to destroy an existing pond and the creatures that already live in it? Who will patrol and protect those of us who live here from all of these hazards that the City is thrusting upon us? We simply believe that the zoning of this quarter section should not be readjusted."

**RAY WARREN** "Has anybody ever approached you from the City to buy your property?"

**JAMBA** "No, they have not."

**RAY WARREN** "How much land do you have there?"

**JAMBA** "Approximately 8-1/2 acres."

**RAY WARREN** "Would you be interested in selling your property?"

**JAMBA** "We would need to speak about that. We would be willing to speak with someone concerning that, yes."

**GAROFALO** "Are there any other questions? Thank you. Is there anyone else to speak on this? Okay. I guess we will hear from the applicant. I guess during your time to speak, Dave, you could use it as some rebuttal time."

**DAVID WARREN** "Again, I am the Director of Wichita's Water and Sewer utilities. We will certainly be glad to respond to some of these issues that have been raised.

Tonight, we are asking for your approval of a Conditional Use permit for this site. The City Council, in response to a professional study to provide sewer service for the future development and growth of Northwest Wichita, authorized staff to go out and to survey and provide a number of potential sites for a wastewater treatment facility, which was the selected alternate for providing sewer service in this area. Staff did that and ultimately eight sites were presented to the governing body for their consideration. The City Council selected the site that is being presented to you tonight as the site for the construction of a new wastewater treatment plant.

Subsequent to that selection, the City staff and Engineer undertook a preliminary site development plan, which is presented to you this evening, which shows where the facility would be located in the northeast corner of the site. A drainage study was done on this site, contrary to what one of the persons making testimony here tonight said, this site, as it is currently envisioned for the Wastewater Treatment Plant is above the 500-year flood plain. The parts of the site that do flood significantly during flood events are located, for the most part, in the southwestern portion of the site that is shown here.

The City has engaged professional engineers, architects, artists and a wetlands specialist in developing its plans for this site. Those plans include what we believe is the development of what will be the premier outdoor environmental education classroom in this region, perhaps in the United States of America. We are very proud of the efforts that we have undertaken at this site. I think as evidence of how well staff and the staff's consultants have addressed this issue, I think in what was an unprecedented move, the Art and Design Board of the City, upon seeing the City's plans for site development, approved the City's aesthetic site development plans on first view. For an undertaking of this magnitude and with the potential public impacts, again, we believe this was unprecedented. And approved them without comment other than to compliment staff and our consultants on how well we had addressed issues out there.

We believe that the site as it will be developed and the plan as it will be developed will present a very good neighbor. Again, we will provide opportunities for the public that do not currently exist. Further, important green areas will be preserved. Wetlands that historically existed on this site, prior to the attempts of man to turn it over to agriculture will be restored. Environmental areas and habitat for various native and migratory gamebirds and animals will be restored in the repairing areas along the creek. Frankly, we feel like the site will present something that is beautiful, that is useful, and will again, be an extremely good neighbor for the people that continue to reside in this area.

We have taken extraordinary steps to protect this area, both environmentally and from the concerns that have been expressed here about flooding. Our flood studies that have been done on the Cowskin Creek have shown that the effluent from this plant at a 2 million gallon per day capacity and initially we think that there will be approximately 500,000 gallons per day that will go

into this facility. It would raise creek levels downstream, under normal conditions, about two inches or less, and under flood conditions, the amount that the creek level is raised is literally imperceptible. It is less than one tenth of an inch. You can't see it in a flood because the creek becomes so wide and spread out that the levels that contribute to floods under those conditions is just non-existent from the amount of flow coming out of this plant.

This will be the first plant of this nature in the state of Kansas. In addition to doing disinfection and a nutrient reduction, it would also do a chemical physical treatment that would remove nitrates and phosphorus from the wastewater stream. The water that will be coming out of this plant essentially will be water that under the regulations of the Health Department and the State of Kansas, an individual could swim in. So, the contribution to the stream as it currently exists today, the water coming out of this plant will be several orders of magnitude better than what flows down the creek today.

There will actually be, in our opinion, improvements in the types of species of fish and other animals that are in the creek and along the creek, and the numbers of those species. That is born out by the fact that downstream of the City's current wastewater treatment plant, fishery studies that have been done by the City and by the State Wildlife Department have shown improvements in species and numbers of fishes, and the return of species that were thought to have been lost into the river segments downstream for that treatment plant. We have made great strides in improving the environment below Wichita's outfall, but this one will be even better than that.

Some other issues that have been raised, we are proposing, as part of this plant, to have a 6.2 acre holding pond effluent from the plant, that will actually come out of the plant and go into this pond and then discharge through the other pond, and then ultimately into the creek.

The fisheries proposal that is out here is an optional proposal. The City does not feel that it is absolutely necessary for us to proceed with that in order for this site developer's plan to be acceptable. To the extent that the neighbors or others may find that objectionable, the City would have no problem at all withdrawing our plans to do that. Frankly, it would save us a considerable amount of money on the development of this site.

With regard to public intrusion onto private property, certainly the City would have no problem with ensuring that the properties in question around this site that are not part of the site currently would be fenced off from this site at the City's expense in order to protect them from whatever intrusions might occur.

On the flooding issue, during periods of storm events, we would install a full monitoring system in this location, that in turn would be tied into the operations of this plant. When the creek levels reached a pre-determined level, it would then send a signal to the outfall down here that would essentially contain the outfall of this plant under initial conditions for up to 12 days and under overflow conditions for as much as 3 days. In our experience in the flood stage, this is more than enough time for any high water conditions to pass beyond this site and downstream.

I believe, for the most part, I have addressed the issues that have been brought up here with regard to toxic chemicals and heavy metals. Toxic chemicals and heavy metals are currently very heavily regulated under the federal discharge requirements. It may interest the Commission to know that the City of Wichita's industrial pre-treatment program in 1998 was a winner of the United States Environmental Protection Agency (EPA) National Award of Excellence for its pre-treatment program that we have here, part of which removes the heavy metals that are used in the plating processes that support the aircraft industries, which includes chromium and cadmium. We have an outstanding program, we are very proud of it and we are very protective of our citizenry and the environment with regard to industrial discharges. That about does it for my time. I will be glad to respond to any questions that the Commissioners may have, but I believe that the City has gone not just the second mile, but the fourth, fifth and sixth mile in trying to present a plan for this site that far exceeds what is really required."

**GAROFALO** "Thank you, David. Are there any questions?"

**JOHNSON** "I am going from memory, but there will be trucks that will transport part of the solid waste back to the other treatment plant, is that right?"

**DAVID WARREN** "That is correct."

**JOHNSON** "Tell me again how many trucks per day? Was it one per day?"

**DAVID WARREN** "At the most. Initially it won't be that much. Initially we are thinking one per week, maybe."

**JOHNSON** "Well, how do you see that route that those trucks would take?"

**DAVID WARREN** "That is yet to be determined, but certainly there is going to have to be some paving that will have to be done out here. We will probably look at what is the best route to get us to the nearest paved road and then pave the section from the plant to where that nearest paved road is."

**JOHNSON** "So it will be on a paved road?"

**DAVID WARREN** "Yes, it will."

**JOHNSON** "I know that on Township roads and different things out there that we hear nothing but complaints about that type of thing. But if there is just one truck and it is paved."

**DAVID WARREN** "And the most likely route is either going to be a route that would go down 135<sup>th</sup> Street to the south to the nearest paved road, which at this time would be 21<sup>st</sup> Street, or possibly something that would go north and then go over to 119<sup>th</sup> Street, which is also paved. Again, that is yet to be determined. That would be part of the ultimate plans."

**JOHNSON** "I didn't see anything on the plan and nothing was said."

**GAROFALO** "Okay. Are there any other questions of David?"

**OSBORNE-HOWES** "I don't know if I read this in here or if I read it in the paper, but I did read somewhere that the entire site would be raised above the 500-year flood plain."

**DAVID WARREN** "If I could, I was going to ask our engineers to come up here and we will show you."

**OSBORNE-HOWES** "I'm sorry, I don't mean to be...but there is a huge difference between taking all of this acreage and raising it. I have been very involved in this issue."

**DAVID WARREN** "Right. (To engineer) Talk to the profile that shows where the 100-year and the 500-year flood or relative to the plant site itself. Bruce, do you or Rob want to do this?"

**BRUCE BARNES** "I am with Professional Engineering Consultants (PEC). I am the program manager on the consulting team for this. What you see in this slide is the line that goes diagonal across the site, goes through the pond."

**GAROFALO** "Is the laser deal there? Whatever it is called."

**BARNES** (Indicating) "This line is called a section line. We did this to illustrate. Down below, this section is cut as if you were to cut into the ground and then look at it horizontally. This area, starting from the left, right here, this line represents the ground as it is today. This line right here. In approximately this location is the channel of Cowskin where this line crosses. This line continues up a grade and then we go up, where we cross our proposed detention pond. You can see the pond there and the elevation, the planned conservation pool level of this pond."

As David said earlier, effluent will flow from the plant through a water feature and into this pond. This pond will be at a conservation level whether there be a pipe that will let the water out at this level. It is planned that it will flow to the other pond, if the other pond is included in this project. The excavation that will come out of this to make this pond will be used to fill the site. The site here is the existing ground line. This area is where the line crosses the plant. This is basically the plant site here. This is the existing ground. As you can see the proposed ground is considerably higher from 5 feet on down to nothing, but approximately 3-1/2 feet across the plant site will be filled up. We are just talking about this being the plant site, this rectangle that is approximately 14 acres.

So this area will be raised. And when it is raised, it will be almost 5 feet above the 500-year flood plain. These two lines here represent the 100-year flood plain elevation and the 500-year. As you can see, the 500-year doesn't even encroach. Each one of these squares represents 5 feet in elevation, so we are way up above even the 500-year flood."

**OSBORNE-HOWES** "The reason I asked the question was that I just recently realized, with all of the development that is suggested for the northwest area, that a lot of the fill can come in for areas around the flood plain for development of homes and other things, and not have ponding or not have detention ponds necessarily to equal it out. So, over time, really, this whole Cowskin feeder area can rise slightly, so a 500-year floodplain today may be different than in the future. I just recently talked to someone who explained that to me, but it sounds like you have really raised it."

**BARNES** "One thing you might notice is that the difference between the 100-year and the 500-year is only about a foot."

**OSBORNE-HOWES** "I know. It is not much. But you are saying you have it even higher."

**BARNES** "Yes, we are approximately 5 feet over the 500-year flood elevation."

**OSBORNE-HOWES** "The reason I asked is that this didn't really speak to that."

**GAROFALO** "Are there any other questions. Okay, thanks. Well, we have heard from everyone. What is the pleasure of the Commission?"

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The application area and the adjacent land is zoned "RR" Rural Residential. The bulk of the land in the Conditional Use area will be devoted to open space uses, consistent with the agricultural and large lot residential character of the vicinity. The majority use of the land in the neighborhood is agricultural with approximately nine homes in the vicinity, all at least 1800 feet from the proposed plant. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "RR", Rural Residential, which is primarily intended for large-lot residential uses and similar low intensity uses such as golf courses, parks and private recycling collection stations. Existing

permitted uses could be developed on this site. Extent to which removal of the restrictions will detrimentally affect nearby property. Minimal detrimental effects are anticipated because of "state of the art" equipment the facility will use, and the extensive landscaping, screening and buffering provided. An extensive siting analysis was conducted in an attempt to locate a plant which would affect the fewest number of residences and still be able to serve the area needing service. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the objective stating: "Promote the development of a comprehensive set of sanitary sewer systems which provide the most economic and efficient service possible." A facility is needed to provide additional growth potential for northwest Wichita and Sedgwick County. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, generating little traffic or need for additional services. In fact, the facility will relieve existing area from potential sewer problems due to lines exceeding capacity, and will permit the expansion of sewer service to areas currently without service.) I move that we recommend to the governing body that the request be approved, subject to the following:

5. Except for the Operations Building, a six-eight foot screening wall consistent with the zoning code requirements shall enclose the entire treatment plant facility. Colors shall be compatible with those used on the operations building.
6. The applicant shall obtain all federal, state and local permits required prior to beginning plant operations.
7. The site shall be developed and maintained in a manner that is generally consistent with the approved site plan.
8. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

**GAROFALO** moved, **LOPEZ** seconded the motion.

**OSBORNE-HOWES** "I would like to say that I think the City has done a good job on this, and maybe the fact that this has gone out suggests that there aren't 300 in the audience to speak against this. Maybe they have just given up, I don't know.

This has been in the newspaper and I happen to live on the Cowskin, so I am a little concerned about it. I do think you have done a good job. I assume this speaks to the growth that is already out there as opposed to the dramatic growth that is expected. We are almost to the point now that we need this?"

**BARNES** "We will in the next phase."

**OSBORNE-HOWES** "So this really is a part of the Comprehensive Plan that is needed now? I mean they need it now as opposed to the future?"

**BARNES** "Yes."

**PLATT** "I will second Susan's comments and go one step further. I think this slide he showed is excellent. Maybe this is something that ought to go into a news release and get printed with an explanation for people to view it."

**OSBORNE-HOWES** "You know, as much public comment as there was against this, and I attended some of those meetings in that area, what is proposed is very nice."

**GAROFALO** "They have done a good job. Is there any other discussion?"

**VOTE ON THE MOTION:** The motion carried unanimously (8-0).

**KROUT** "If there is a protest filed within 14 days from someone in the notice area, then this would go on to the City Council. Otherwise, it is a final decision."

-----  
**GAROFALO** "Is there anything else to be brought before the Commission?"

**MOTION:** That the Metropolitan Area Planning Commission adjourn.

**WHEELER** moved, **WARREN** seconded the motion, and it carried unanimously (8-0).

The meeting was formally adjourned at 6:15 p.m.  
-----

State of Kansas     )  
Sedgwick County    ) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)